***THE HONOURABLE SRI JUSTICE GODA RAGHURAM**
AND
THE HONOURABLE SRI JUSTICE S. ANANDA REDDY

% FRIDAY, THE 23RD DAY OF MARCH TWO THOUSAND SEVEN

+WRIT PETITION No. 24989 OF 2001

S.Govindarajulu S/o late S.Nagaiah
Hindu, aged 50 years, Occupation:
District & Sessions Judge, now working on O.D. as
Chief Legal Advisor, Office of the Additional D.G.P., C.I.D, Hyderabad

… Petitioner

vs

$ High Court of Andhra Pradesh, Hyderabad
rep. by its Registrar (Vigilance), High Court Buildings, Hyderabad, and Others.

… Respondents

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> HEAD NOTE

! For the Petitioner : Sri Challa Sitaramaiah, Senior Counsel, assisted by Sri P.Harinatha Gupta, Advocate

^ For the respondent No.1: Sri D.V.Sitarama Murthy, Standing Counsel

For the respondent No.2: None appeared

For the respondent No.3: Sri G.Vidyasagar, Advocate

For the respondent No.4: Sri V.Ranga Reddy, Advocate

For the respondent No.5: Sri B.Adinarayana Rao, Advocate

For the respondent No.6: Government Pleader for Home

? 01)T.H.B.Chalapathi and others vs High Court of AP & Ors 1986 L.A.B.I.C. 1069

02)V.Bhaskar Rao and others vs State of AP & Ors AIR 1993 SC 2260

03)K.C.Joshi vs Union of India AIR 1985 SC 1046

04)State of U.P vs M.J.Siddiqui AIR 1980 S`15890/C 1098

05)Baleshwar Dass and others vs State of U.P. and others (1980) 4 SCC 226

06)S.B.Patwardhan vs State of Maharastra (1977) 3 SCC 399

07)N.K.Chauhan vs State of Gujarat (1977) 1 SCC 308

08)O.P.Singla and another vs Union of India and Others AIR 1984 SC 1595

09)O.P.Garg and others vs State of U.P. and others (1991) Supp(2) SCC 51

10)Direct Recruit Class II Engineering Officers' Association vs State of Maharashtra (1990) 2 SCC 715

11)Delhi Water Supply and Sewage Disposal Committee vs R.K.Kashyap (1989) Supp(1) SCC 194

12)Narender Chadha vs Union of India (1986) 2 SCC 157

13)Secretary State of Karnataka and Others vs Umadevi and others (2006) 4 SCC 1

14)P.K.Chinnasamy vs Government of Tamil Nadu and others (987) 4 SCC 601

15)Dr.Amarjit Singh Ahluwalia vs The State of Punjab and Others (1975) 3 SCC 503

16)Bhey Ram Sharma vs Haryana State Electricity Board (1994) Supp.I SCC 276

17)Tagin Litin vs State of Arunachal Pradesh and Ors AIR 1996 SC 2121

18)Dr.Harikishan Singh vs State of Punjab and others (1971) 2 SCC 58

19)Mohan Lal vs the Management of M/s.Bharat Electronics Ltd. AIR 1981 SC 1243

20)Union of India vs Virpal Singh Chauhan (1995) 6 SCC 684

21)Ajit Singh Januja vs State of Punjab (1996) 2 SCC 715

22)B.S.Yadav and Others vs State of Haryana and others AIR 1981 SC 561

23)A.K. Subraman vs Union of India AIR 1975 SC 483

24)N.K.Chauhan vs State of Gujarat AIR 1977 SC 251

25)D.Ganesh Rao Patnaik & Others vs State of Jharkand & Ors (2005)8 SCC 454

26)State of Bihar vs Madan Mohan Singh (1994) Supp.(3) SCC 308

27)Suresh Chandra Jha vs State of Bihar and others (2007) 1 SCC 405

28)Chairman, Puri Gramya Bank vs Ananda Chandra Das (1994) 6 SCC 301

29)Sanjay Dhar vs J&K Public Service Commission and another(2000) 8 SCC 182

30)Madan Lal vs State of J&K (1995) 3 SCC 486

31)Prafulla Kumar Swain vs Prakash Chandra Misra & Ors (1993) Supp.3 SCC 181

32)Jagidish Ch.Patnaik and Others vs State of Orissa & Ors (1998)4 SCC 456

33)State of Uttaranchal and another vs Dinesh Kumar Sharma (2007) 1 SCC 683

34)Bimlesh Tanwar vs State of Haryana and Others (2003) 5 SCC 605

35)Ajit Singh (II) vs State of Punjab AIR 1967 SC 52

36)P.S.Ghulaud vs State of Haryana (1995) 5 SCC 625

37)AIIMS Students Unions vs AIIMS (2002)1 SCC 428

38)K.Duraisamy vs State of T.N.(2001) 2 SCC 38

39)Rabindra Nath Bose vs Union of India AIR 1970 SC 470

40)Joginder Nath and Others vs Union of India and Others(1975) 3 SCC 459

41)Ramchandra Shankar Deodhar vs State of Maharashtra(1974) 1 SCC 817

42)G.P. Doval & Ors vs Chief Secretary, Govt of U.P. & Ors (1984)4 SCC 329

43)Arun Kumar Chatterjee vs S.E.Railway and others (1985) 2 SCC 451

THE HONOURABLE SRI JUSTICE GODA RAGHURAM
AND
THE HONOURABLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO. 24989 OF 2001

ORDER: (Per *the Hon'ble Sri Justice G.Raghuram*)

Between:

S.Govindarajulu

… Petitioner

And:

High Court of Andhra Pradesh, Hyderabad and others

… Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM
AND
THE HONOURABLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO. 24989 OF 2001

ORDER: (Per *the Hon'ble Sri Justice G.Raghuram*)

The conflict is commonplace, the facts simple and the law clear; and yet a combat. This writ petition is another illustration of a recurring morbidity in our public services, a dispute regarding *inter se* seniority between direct recruits and promotees. Despite over abundance of precedential guidance, casual administrative practices engender such disputes with regularity. Negligent administrative handling of this area festers creative claims to seniority. The dispute in this writ petition is commonplace. Such disputes in several services including Higher Judicial Service are a continuing phenomenon. We record yet another opinion on an oft visited theme.

In substance, the petitioner seeks determination of his seniority status above respondent Nos. 2 to 5 in the category of District and Sessions Judges Grade-II (in the Andhra Pradesh State Higher Judicial Service) governed by Special Rules made under the proviso to Article 309 of the Constitution, called the Andhra Pradesh State Higher Judicial Service Rules (for short 'the Special Rules'). He also assails the administrative order of the High Court of Andhra Pradesh (the first respondent) dated 17-08-2001 whereby his representations dated 19-12-1996 and 18-02-1998 were rejected and seeks a direction (to the first respondent) to treat him as senior to respondent Nos. 2 to 5 in the category of District and Sessions Judges Grade-II. The State of

Andhra Pradesh represented by the Secretary to the Government, Law (Legislative Affairs and Justice), Hyderabad, is impleaded as sixth respondent.

The factual background to the *lis* :

The petitioner entered the judicial service of the State as 'District Munsif' (a post borne in Category-II of the Andhra Pradesh State Judicial Service) by direct recruitment in 1979. He was thereafter promoted as a Subordinate Judge (a post borne in Category-I of this service).

In 1991, the sixth respondent notified five vacancies of District and Sessions Judges Grade-II (Category-II of the Andhra Pradesh State Higher Judicial Service) for direct recruitment. Respondent Nos. 2 to 5 applied. Of these, the second respondent belongs to Scheduled Tribe category, the third respondent to Open Category, the fourth respondent to Scheduled Caste and the fifth respondent to Backward Class-B category. By orders in G.O.Ms.No. 509, General Administration (SC-F) Department dated 28-09-1993, the respondent Nos. 2 to 4 were appointed to act as District and Sessions Judges in Category-II under Rule 2 (a)(ii) of the Special Rules. The appointment order specified that the respondents would be on probation for a total period of one year with effect from the date on which they join duty; separate orders of posting to be issued by the first respondent.

Eleven days earlier, in G.O.Rt.No.4623, General Administration (SC-F) Department dated 17-09-1993, the petitioner and six others belonging to the substantive category of Subordinate Judges were appointed as District and Sessions Judge, Grade-II, by transfer; the appointments to take effect from the dates on which the respective officers assume charge; and the orders of posting to be issued by the first respondent. The appointment order in G.O.Rt.No. 4623 specified that it is an initial

temporary appointment.

In notification No. 362-B.Spl., dated 04-10-1993, the petitioner, respondent Nos. 2 to 4 and two other District and Sessions Judges Grade-II (appointed by transfer) were issued orders of posting.

In G.O.Ms.No.616, General Administration (SC-F) Department dated 20-11-1993, the fifth respondent was appointed to act as District and Sessions Judge Grade-II; put on probation for a period of one year with effect from the date of his joining duty; and separate orders to be issued by the first respondent regarding his posting. In notification No.439-B.Spl., dated 26-11-1993, the first respondent issued orders of posting to the fifth respondent.

Thus, in the category of District and Sessions Judge Grade-II, the petitioner was issued an order of appointment on 17-09-1993, the respondent Nos. 2 to 4 on 28-09-1993 and the fifth respondent on 28-11-1993. The first respondent issued a common order posting the petitioner and the respondent Nos. 2 to 4, on 04-10-1993 and to the fifth respondent on 26-11-1993. Pursuant to the orders of appointment and postings as above, the dates with effect from which the petitioner and party respondents joined and were continuously on duty as District and Sessions Judge Grade-II are:

06-10-1993 – third respondent;
11-10-1993 – second respondent;
16-10-1993 – petitioner;
18-10-1993 – fourth respondent; and
02-12-1993 – fifth respondent.

In the Half Yearly List of Judges of the High Court of Andhra Pradesh and Members of the Andhra Pradesh State Higher Judicial Service (for short 'Half Yearly list') (as on 01-01-1994) published by the first respondent (and received by the petitioner

in April, 1994), respondent Nos. 2 to 4 were shown above the petitioner. On 19-12-1996, the petitioner submitted a representation to the first respondent complaining of this fact. He represented that his appointment was earlier to respondent Nos. 2 to 4 and that Rule 6 of the Special Rules mandated that the seniority of a person appointed to Category-I or Category-II should be determined with reference to the date from which he is continuously on duty in that category. The petitioner sought seniority over respondent Nos. 2 to 4.

It would appear that on 22-07-1994 the fifth respondent represented to the first respondent that though his name was at serial No.1 in the list sent up by the first respondent (recommending appointment as District and Sessions Judge Grade-II), respondent Nos. 2 to 4 were issued appointment orders by the sixth respondent in September, 1993, while the fifth respondent was issued the appointment order on 20-11-1993 for no fault of his. He represented for restoration of his seniority (vis-à-vis the respondent Nos. 2 to 4), in harmony with the *inter se* positions as recommended by the first respondent. In G.O.Ms.No.843 General Administration (SC-F) Department dated 01-03-1996, the sixth respondent issued an order fixing the *inter se* seniority of respondent Nos. 2 to 5. Accordingly, the fifth respondent is determined to be senior to the respondent Nos. 2,3 and 4 and in that order of seniority. The Government relaxed the provisions of Rule 33 (b) of the Andhra Pradesh State and Subordinate Service Rules,1962 – Part-II (for short 'the General Rules') to accord seniority to the fifth respondent (over respondent Nos. 2 to 4).

In the Half Yearly list, as on 01-07-1996, the fifth respondent, followed by respondent Nos. 2 to 4, were shown above the petitioner (at serial Nos. 58 to 62). In the earlier Half Yearly list (as on 01-01-1996), the respondent Nos. 2 to 4, the

petitioner and respondent No.5 figured at serial Nos. 60 to 63 and 67, in that order. No notice or opportunity was afforded to the petitioner before upgrading the fifth respondent's seniority over the petitioner. No such notice or opportunity preceded the issuance of the orders in G.O.Ms.No. 843 dated 01-03-1996, either.

On 18-02-1998 the petitioner represented to the first respondent against the placement of fifth respondent above himself in seniority and asserted that he had no notice or opportunity of being heard before such placement. The petitioner also pleaded that the fifth respondent could not be treated as senior to him, as that would violate the injunction of Rule 6 of the Special Rules. On 17-08-2001, nearly five years after the first representation (dated 19-12-1996) and three and half years after the second representation (dated 18-02-1998), the first respondent rejected the petitioner's representations by a laconic order which states that the petitioner's representations and his request for fixing of seniority above the fifth respondent "*has been considered by the High Court and the same is rejected*".

The writ petition is filed on 04-1-2001.

Sri Challa Sitaramaiah, learned senior counsel for the petitioner has urged that the petitioner is lawfully entitled to seniority over respondent Nos. 2 to 5. It is contended that despite his earlier appointment order (17-09-1993) as against the appointment order of respondent Nos. 2 to 4
(28-09-1993), the first respondent failed to issue posting orders to the petitioner ahead of respondent Nos. 2 to 4 and had issued a common order of postings, to the petitioner and these respondents, on 04-10-1993. The delay is not *bona fide* "*but is intended to help respondent Nos. 2 to 4*" to enable them to be his seniors. It is further contended that the determination of *inter se* seniority between the petitioner and respondent Nos. 2 to 4 and 5

as well, is violative of the mandate of Rule 6 of the Special Rules and illegal. According to the petitioner, the laconic rejection of his two representations (dated 19-12-1996 and 18-02-1998) by the first respondent is arbitrary. Not only is no reason vouchsafed for rejecting his representations, the rejection is totally unresponsive to his earlier representation dated 19-12-1996 (as regards claim of seniority over respondent Nos. 2 to 4). The rejection proceeds as though the petitioner had represented for seniority against the fifth respondent only.

1st Respondent's defence:-

- The broad chronology of facts set out herein above is admitted. It is however erroneously pleaded: "*the respondents 2 to 4 took charge in their respective posting prior to the petitioner*". This assertion by the 1st respondent is clearly contrary to the record. All the half yearly lists since 1.1.1994 up-to-date verify that the dates of joining of the petitioner and the respondents 2 to 5, are as set out supra in this judgment. The petitioner's allegation that posting orders to him were delayed to accord seniority benefits to respondents 2 to 4, is denied. It is suggested that common posting orders for the petitioner and respondents 2 to 4 were issued on 4.10.1993 by the 1st respondent in the normal course of administration.
- The subsequent order of appointment, posting order and joining the post by the 5th respondent is admitted. It is stated that of the five vacancies notified for direct recruitment the first vacancy was earmarked for BC-B category, second vacancy for ST, the third vacancy for OC, the fourth vacancy for SC and the fifth for OC category candidates. The first respondent recommended the 5th

respondent for the first vacancy (BC-B) and respondents 2 to 4 for the 2nd to 4th vacancies (ST, OC and SC). The first respondent recommended the 5th respondent's name in the order of preference against the first vacancy, to satisfy the rule of reservation. However the Government issued appointment order to the 5th respondent subsequent to the appointment order of respondents 2 to 4. Though appointed later to respondents 2 to 4, the 5th respondent was assigned seniority "*for the purpose of satisfying the rule of reservation*". The first respondent recommended to the sixth respondent to notify seniority according to its initial recommendation and the sixth respondent eventually issued proceedings accordingly.

- Though the seniority under Rule 6 of the Special Rules must be determined with reference to the date from which a person is continuously on duty and though the petitioner was appointed prior to respondents 2 to 4, the posting orders to the petitioner and the respondents 2 to 4 were issued on 4.10.1993. Therefore the provisions of Rule 6 would not support the petitioner's claim
- Rule-6 must be read in harmony with Rule 33(b) of the General Rules.
- To satisfy the rule of reservation the first respondent addressed the sixth respondent to notify the 5th respondent's seniority over the petitioner and respondents 2 to 4. Accordingly the 5th respondent, followed by respondents 2 to 4, followed by the petitioner is the seniority position – vide the 6th respondent's order in G.O.Ms. No. 843, dt 1.3.1996.
- The petitioner's claim to seniority over respondents 2 to 4 is belated. I f aggrieved the petitioner ought to have

challenged the posting order dated 4.10.1993 or objected to the Half Yearly list published on 1.1.1994. He cannot now object to respondents 2 to 5 being placed above him in seniority.

The 4th Respondent's defence (counter dated 29-08-2002) :-

- Respondents 2 to 4 were appointed as direct recruits on a regular basis in substantive vacancies, while the petitioner was promoted temporarily. The petitioner's being a temporary promotion, is liable to be reverted in a contingency whereas respondents 2 to 4 suffer no such risk. Since the petitioner's promotion is temporary, he cannot claim seniority over respondents 2 to 4. While direct recruits are appointed in roster points within the cadre strength of posts, the petitioner was temporarily promoted, to a post outside the cadre.
- Rule-6 of the Special Rules must be read in consonance with Rule 33(b) of the General Rules.
- The 4th respondent having been appointed against a post earmarked for a roster point reserved for SC category, his seniority cannot be disturbed, as seniority must be fixed as per the roster point and not on the basis of either the date of appointment or of assuming charge of the post.
- Since seniority list was prepared as per the seniority determined by the selection authority, the mere date of appointment to a service would not confer any right to seniority against respondents 2 to 4.
- The petitioner's claim to seniority over the 4th respondent is belated.

The 5th Respondent's defence :-

- Since the petitioner submitted representations only on 19.12.1996 and 18.2.1998, they are belated.
- The 1st respondent selected the 5th respondent and respondents 2 to 4 together at the same selection and placed the 5th respondent above respondents 2 to 4, in accordance with the roster points. However the sixth respondent issued orders of appointment earlier to the respondents 2 to 4 and later to the 5th respondent, for no fault of the 5th respondent. Since his appointment is against the roster point reserved for BC-B category, the 5th respondent's seniority cannot be disturbed, as seniority has to be determined in accordance with the roster point and not on the basis of the date of appointment.
- The order of the 6th respondent dated 1.3.1996 in G.O.Ms.No. 843, fixing the *inter se* seniority of the 5th respondent above respondents 2 to 4 was pursuant to the directions of the first respondent, in relaxation of rule 33(b) of the General Rules and in consonance with the rule of reservation. It was communicated to all the direct recruits appointed as per the original select list.
- Since the order in G.O.Ms.No. 843 was only a correction, there is no requirement of issuing any notice to other persons.
- The 5th respondent was appointed as a full member in Category-II in a retirement vacancy w.e.f. 2.11.1993. He is declared as full member of the service earlier to the petitioner. Full members are entitled to preference over approved probationers and probationers, for seniority purposes.
- In his representation dated 19.12.1996 the petitioner did

not claim seniority over the 5th respondent though by that date G.O.Ms.No.843 dated 1.3.1996 was issued. The petitioner objected to the 5th respondent's seniority only by his representation dated 18.2.1998. This is a belated representation.

- The party respondents are direct recruits appointed to substantive vacancies within the cadre whereas the petitioner was temporarily promoted to a post outside the cadre.
- On the petitioner's representation the 1st respondent called upon the party respondents to file objections. The 5th respondent submitted his objections on 20.11.1999. Considering all the objections the petitioner's claim was rejected by the 1st respondent.

The 5th respondent has filed an additional counter affidavit dated 8.3.2007. According to this pleading:

- From the Half Yearly list as on 1.7.1993 the total strength of the AP State Higher Judicial Service is 65 with a temporary addition of 40 posts (in Grade-II).
- There should have been 22 direct recruits, but there were only 17 (as on 1.7.1993), below the 33 1/3rd percent quota (for direct recruits), mandated by Rule-2 of the Special Rules.
- In the Half Yearly list as on 1.7.1994 the cadre strength is 55 with a temporary addition of 43 Grade-II posts. There were only 21 direct recruits Grade-II Officers (including respondents 2 to 5).
- The notification inviting applications for direct recruitment for 5 posts was issued on 7.1.1992. The list was forwarded to the 6th respondent by the 1st respondent in May/June 1993 and was pending thereat. The 1st

respondent approved the list of promotees and sent it to the 6th respondent, thereafter. Even while the direct recruitment recommendation was pending consideration by the State, the sixth respondent issued appointment orders to the promotees. Therefore and since the direct recruitment recommendation was pending consideration at an advanced stage with the 6th respondent, the 1st respondent issued posting orders after receipt of appointment orders of the respondents 2 to 4 (to the petitioner and the respondents 2 to 4), by a common order dated 04-10-1993.

- Rule-6 of the Special Rules is subject to Rule-2 and Rule-2A of the Special Rules.
- The date of joining is an uncertain and arbitrary event depending on several irrational exigencies such as postal delay or the relative distance of an appointee's residence vis-à-vis the location of the post to which posted and is therefore not a rational circumstance for determining seniority.

Sri Sitarama Murthy, the learned counsel for the first respondent reiterated in oral arguments the stand adopted by the first respondent in the pleadings. He denied the allegation that the petitioner's posting order was delayed and issued along with posting orders of the respondent Nos. 2 to 4 to deprive him seniority over these respondents. On behalf of the first respondent it is thus categorically pleaded and urged that the issuance of posting orders on 04-10-1993 to the petitioner and respondents No. 2 to 4 and two other officers appointed by transfer as District and Sessions Judges Grade-II was a normal administrative incident. It was further contended that the High Court had recommended the names

of the fifth respondent followed by respondent Nos. 2 to 4 and in that order of preference, for appointment as District and Sessions Judges Grade-II to satisfy the 'rule of reservation' and as the relevant roster points for this recruitment were in that order. Since the fifth respondent's appointment order was issued subsequently on account of an administrative delay at the level of executive Government, the High Court recommended restoration of seniority of the fifth respondent over respondent Nos. 2 to 4. Consequently, the sixth respondent issued an order in G.O.Ms.No.843 dated 01-03-1996 relaxing the provisions of Rule 33 (b) of the General Rules, and notifying the seniority of the 5th respondent over respondent Nos.2 to 4.

The learned counsel for the fourth respondent Sri V.Ranga Reddy has adopted the arguments advanced on behalf of the fifth respondent.

Sri Adinarayana Rao, learned counsel reiterated the position adopted by the first respondent viz., that the seniority of the fifth respondent was rightfully restored since the issuance of an order of appointment order to him subsequent to issuance of appointment order to respondent Nos. 2 to 4 was contrary to the order of preference recommended by the first respondent (the selection authority) and was the product of an avoidable executive error. Sri Rao contended that the order of preference *inter se* respondent Nos. 2 to 5 determined by the first respondent could not be subverted by an administrative error of the sixth respondent, issuing orders of appointment to respondent Nos. 2 to 4 earlier to the fifth respondent. It is for this reason that the error was later corrected and G.O.Ms.No. 843 issued restoring the seniority of the fifth respondent over respondent Nos. 2 to 4. It was also contended that after the order of sixth respondent in

G.O.Ms.No. 843, the fifth respondent ranks senior to the respondent Nos. 2 to 4 in Grade-II. On this account, respondent Nos. 2 to 4 have no grievance. In the circumstances, Rule 6 of the Special Rules must not be given substantial significance. If Rule 6 of the Special Rules were rigorously and literally applied, it would lead to incongruous consequences. On application of Rule 33 (b) of the General Rules; in the light of determination of preference by the first respondent and in the light of the order of the sixth respondent in G.O.Ms.No. 843, the fifth respondent is senior to respondent Nos. 2 to 4 in Grade-II. On literal application of Rule 6 of the Special Rules, however, the order of seniority would be (i) the third respondent; (ii) the second respondent; (iii) the petitioner; (iv) the fourth respondent; followed by (v) the fifth respondent. Such an arrangement of seniority would subvert the order of preference determined by the first respondent as also the provisions of Rule 33 (b) of the General Rules. On behalf of the fifth respondent it is suggested that the seniority in Grade-II must be determined by a harmonious compromise of the provisions of Rule 33 (b) of the General Rules and Rule 6 of the Special Rules. Sri Rao, learned counsel implies that such a compromise is achieved by treating the fifth respondent followed by respondent Nos.2 to 4 as seniors to the petitioner. Since the appointment of the petitioner is clearly specified to be temporary (G.O.Rt.No. 4623 dated 17-09-1993) he cannot have precedence over the respondent Nos. 2 to 5 in the matter of seniority. In any event, the relief claimed as against the fifth respondent is barred by latches and delay as the fifth respondent's seniority over the petitioner was determined by the sixth respondent's order in G.O.Ms.No.843 dated 01-03-1996; whereas the petitioner lodged objections to the fifth respondent's seniority only on 18-02-1998, urges Sri

Adinarayana Rao.

On the basis of the rival pleadings and the oral arguments, the following are the core issues falling for resolution:

ISSUES

(a) Whether the petitioner is disentitled to seniority over respondent Nos. 2 to 5 on account of his appointment to the post of District and Sessions Judges Grade-II being temporary;

(b) Whether the issuance of a common posting order on 04-10-1993 (first respondent's notification No. 362-B. Spl.,) is arbitrary; and if so whether the petitioner is entitled to seniority over respondent Nos. 2 to 5 since his order of appointment is earlier in point of time to the appointment order of respondent Nos. 2 to 5;

(c) Whether since the appointment by direct recruitment to the post of District and Sessions Judges Grade-II (33 1/3% of the total number of permanent posts), being the mandate of proviso (ii) of Rule 2 of the Special Rules; a person appointed by transfer to the post of District and Sessions Judge Grade-II from the post Subordinate Judge (Category-I of the Andhra Pradesh State Judicial Service) is ineligible for seniority over directly recruited District and Sessions Judges Grade-II, where the appointment by transfer is not to a permanent post allocable to the non-direct recruits quota;

(d) Whether the *inter se* seniority of respondent Nos. 2 to 5 determined in consequence of the 6th respondent's order in G.O.Ms.No. 843 prevails over the mandate of Rule 6 of the Special Rules and operates to legitimize the seniority of the respondent Nos. 2 to 5 over the petitioner *de hors* the respective dates of continuous duty in Grade-II; and

(e) Whether the petitioner is disentitled to relief on account of latches and delay.

The broad contours of the Special Rules are no longer *res*

integra. In ***T.H.B.Chalapathi and others Vs. High Court of Andhra Pradesh and others***(1) **,** *inter se* seniority between persons appointed to the category of District and Sessions Judges, Gr.II by direct recruitment vis-à-vis those appointed on transfer, fell for resolution in the context of the Special and the General Rules.

In this case, certain Officers working as Subordinate Judges were appointed as District and Sessions Judges Gr.II initially on a temporary basis. They continued as such till they were regularly appointed. The initial temporary appointments and later regular appointments were pursuant to recommendations by the High Court and of persons fully qualified to hold the posts in Gr.II. The initial temporary appointments prescribed no period of probation. After the appointments of respondent Nos.3 to 23 and their commencement of duty on a continuous basis, pursuant to a notification in 1976 for filling up seven (7) posts in Gr.II by direct recruitment, six(6) persons were appointed by direct recruitment in December-1976 and they assumed duty in January,1977. In May 1978 the High Court forwarded proposals for regularization of the temporary appointments of respondent Nos.3 to 23 and some others who had since retired (appointees by transfer, to Gr.II). By a Government Order dated.18-07-1978 these respondents were appointed to Gr.II on regular basis with effect from the respective dates, they had assumed charge on their initial appointments. The direct recruit Officers challenged the orders of regularization passed in favour of the Officers appointed to Gr.II on transfer and with effect from the respective initial dates of assumption of charge. A Division Bench of this Court by the judgment dated.28-12-1985 recorded the following observations and conclusions:

(a) Under Rule.2 of the Special Rules the posts of District and Sessions Judges, Gr.II include permanent as well as other posts. However the proviso to Rule.2(ii)

mandates that 33 1/3rd % of the total number of permanent posts shall be filled or reserved to be filled by direct recruitment;

(b) On an harmonious reading of Rules.1, 2 and 5(Special Rules) the service is seen to consist of permanent as well as temporary posts of District and Sessions Judges, Gr.II;

(c) Rule.2 of the General Rules provides paramountcy to the provisions of Special Rules over the General Rules in case of conflict. Therefore, appointments to temporary as well as the permanent posts are governed by the Special Rules. Rule.10(a)(i) or Rule.37 of the General Rules would not apply;

(d) Regularization of the services of the respondent Nos.3 to 23 (Officers appointment to Gr.II, by transfer) is not contrary to the Rules governing their service and is therefore not illegal;

(e) On an interactive analysis of Rules.2 and 6 of the Special Rules, the quota fixed (for direct recruitment) would apply only at the stage of appointment and at no subsequent stage and there is no rule of rotation mandated;

(f) *Qua* Rule.6 of the Special Rules seniority in a category must be determined with reference to the date from which a person is continuously on duty in that category. Seniority in accordance with the mandate of the Rule.6 of the Special Rules will follow notwithstanding that a person is appointed to a permanent post or a temporary post. The rules of quota and rotation are irrelevant for determination of seniority. The distillate of the rationes in ***T.H.B.Chalapati*** (1supra) is set out in paragraph.25 of

the report:

" From the decisions referred to above, it is very clear that where there is no statutory rule or the rule that prescribes quota has been deviated, seniority shall be determined on the basis of continuous officiation in a non-fortuitous vacancy. On a reading of the rule, it is evident that the service consists of not only permanent posts but also temporary posts. Rule 1 itself provides that Category II consists of District and Sessions Judges, Grade II including Additional District and Sessions Judges. Rule.2 (a)(i) which deals with the appointment of the Subordinate Judges, by transfer, to be the District and Sessions Judges, Grade II does not limit the appointment only to permanent posts unlike Rule2(a)(2) under which, the appointment of the direct recruits is hedged by a limitation restricting it to only permanent posts. On the other hand, Rule.5 which provides that the appointment and reappointment of persons under reversion to the category of District and Sessions Judges of Grade.II shall be made by the Governor, gives a clear indication that Subordinate Judges can be appointed by transfer to be District and Sessions Judges, Grade II under the special rules, even in respect of temporary posts. From the facts of this case, it cannot be said that the temporary posts in which the respondents were appointed were fortuitous or were created as a stop-gap arrangements. The temporary posts which were in existence at the time the respondents were appointed, were there since a number of years and they were even made permanent subsequently. All the respondents though appointed in temporary posts in the beginning continued to hold the posts without break in service till they were confirmed. Their appointments on a temporary basis were made following the very same procedure that was followed in making regular appointments. The High Court considered the fitness of each one of the respondents and having been satisfied that they were suitable to be appointed as District and Sessions Judges Grade II by transfer, recommended to the Governor for their appointment. The Governor accepted the recommendation of the High Court and appointed

them. The functions performed and the responsibilities discharged by them when they held temporary posts are identical to those performed by them after their confirmation. It is obvious that no provision has been made in the Special rule, prescribing period of probation for the appointees by transfer, in view of their long judicial experience as Sub-Judges. So the rule making authority intended to give weightage to the continuous service rendered by such persons even on a temporary basis and incorporated that intention in Rule.6, the direct recruits who entered the service long after the appointees by transfer were appointed would have scored a march over them, in which case there might not have been any difficulty in declaring such rule as violative of Articles 14 and 16 of the Constitution of India being arbitrary and unreasonable."

Special Leave Petition No.1035 of 1996 against the above judgment was dismissed by the Supreme Court on 31-01-1998.

Some direct recruits District and Sessions Judges, Gr.II, appointed as such in 1981 claimed seniority against the Officers temporarily appointed to Gr.II by transfer during 1978 and 1979, by way of a writ petition under Article.32 of the Constitution. This dispute was resolved in ***V.Bhaskar Rao and others Vs. State of Andhra Pradesh and others*** **([2]).** In ***V.Bhaskar Rao*** (2supra) the Supreme Court on an analysis of the provisions of the special rules held:

(a) That all posts designated as District and Sessions Judges, Gr.II under category-II are part of the service under Rule.1; as and when a post of District and Sessions Judge, Gr.II is created - permanent or temporary, it becomes part of the service under Rule.2 of the Special Rules;

(b) A quota for direct recruitment is provided only to the permanent posts under Rule.2 to an extent of 33 1/3rd of the permanent posts;

(c) Under Rule.6, the seniority of persons appointed to Gr.II must be fixed on the basis of continuous length of service in this category;

(d) Whether a person is continuously on a duty against a temporary post or a permanent post is of no consequence;

(e) To the extent the Special Rules apply, the General Rules are excluded. Rule.10(a)(i) of the General Rules has no application to the Andhra Pradesh State Higher Judicial Service as the service is governed by the special rules;

(f) The special Rules provide a complete scheme for appointment and seniority of the members of the service and Rule.10(a)(i) of the General Rules has no application to the service constituted under the special rules;

(g) Since temporary posts of District and Sessions Judges, Gr.II are part of the service, seniority has to be counted on the basis of the length of continuous service including service rendered against temporary posts; and

(h) Rule.6 of the special Rules is not dependent on the proviso to Rule.2(ii). In the scheme of the Rules, seniority is not dependent on quota rule. Quota has been provided for direct recruits only against permanent posts. The seniority rule permits counting of the total period of service from the date a person is on duty against a post in the category. Consequently the petitioners (direct recruits) even though substantively appointed to the service earlier to respondent Nos.4 to 16 (appointed on transfer) in view of

Rule.6 can not be declared seniors in view of the continuous length of service basis mandated by Rule.6

Sri Sitaramaiah has urged that the determination of seniority by the 1st respondent *inter se* the petitioners and respondent Nos.2 to 5, according prefential seniority to these respondents is in gross violation of the provisions of the statutory rules and the binding authority of the precedents in ***T.H.B.Chalapathi and V.Bhaskar Rao (***1 and 2 supra***).***

ISSUE No.(a)

The petitioner's order of appointment (GO.Rt.No.4623, dated.17-09-1993) clearly specifies that his appointment (as a District and Sessions Judge, Gr.II, by transfer), is temporary. In the Half yearly list as on 01-01-2007 the name of the petitioner along with respondent Nos.2 to 5 appears in the category of Selection Grade District Judges. Apparently the petitioner was promoted from Grade-II to Grade-I and thereat also accorded the Selection Grade (in Grade-I). The pleadings on record do not disclose that the initial temporary appointment has been substituted by a later regular appointment. It is however not the case of either 1st respondent or even of respondent Nos.2 to 5 that the petitioner is not a member of the service either in Gr.II or Grade-I. Despite sustained queries by the Court, the counsel for the respondents are agreed that the petitioner cannot be considered to be not a member of the service. After his order of appointment dated.17-09-1993 and since the order of his posting dated.04-10-1993 (along with respondent Nos.2 to 4) and his joining the post of District and Sessions Judge, Gr.II on 16-10-1993, the petitioner is continuously on duty without a break, in the

Andhra Pradesh State Higher Judicial Service either in a Grade-II post or a Grade-I post, till date. It is not the case of the respondents that the petitioner was ever reverted for want of a vacancy. Either on the appointment of the 5th respondent (By G.O.Rt.No.616, dated.20-11-1993), the order of posting dated.26-11-1993 or on joining the post in Gr.II on 2-12-1993 was the petitioner reverted. This circumstance compels the inference that on appointment and posting, the petitioner did not serve in a Gr.II post allocable to direct recruitment under the Special Rules. The order of appointment of the petitioner was pursuant to a due recommendation by the High Court, for his appointment by transfer to a post in Grade-II. The order of posting was by the 1st respondent.

As pointed out in ***K.C.Joshi Vs. Union of India*** **([3])** appointment to a substantive post and appointment in a substantive capacity are different things. It is the substantive appointment that makes a person a member of the service. What then is the connotation of a substantive appointment? In ***State of U.P Vs. M.J.Siddiqui*** **([4]) it** is pointed out that there is no logical formula or a special charm in the word "substantive". The mere use of the word "appointment in a temporary vacancy" by itself would not conclude the matter or lead to the irresistible inference that the appointment was not made in a substantive capacity, since a substantive appointment could be made to a purely temporary vacancy as well. In order to determine the nature of appointment, the Court must look to the heart and substance of the matter, the surrounding circumstances, the mode, the manner and the terms of appointment and other relevant factors. In ***Baleshwar Dass and others Vs. State of U.P. and others*** **([5])** the Supreme Court building upon the observations in ***S.B.Patwardhan Vs.State of Maharastra ([6])*** and in ***N.K.Chauhan Vs. State of***

Gujarat ***(*** [7] ***)*** held that when a post is not purely temporary or *ad hoc, of* short duration or of an adventious nature, the holder of such temporary post cannot be degraded to the position of one who by accident of circumstance or for a fugitive tenure occupies the temporary post for a fleeting term. The Court held that a post of short duration, say of a few months, is different from another which is terminologically temporary but is kept on for ten or more years under the head "temporary" for budgetary or other technical reasons. Those who are appointed and hold temporary posts of the latter category are also members of the Service provided they have been appointed substantively to that temporary post. On what is binding in a substantive capacity, the Court held:

> " *In our view, the emphasis imparted by the adjective "substantive" is that a thing is substantive if it is "an essential part or constituent or relating to what is essential" We may describe a capacity as substantive if it has independent existence or is of considerable amount or quantity. What is independent in a substantive measure may reasonably be described as substantive. Therefore, when a post is vacant, however designated in officialese, the capacity in which the person holds the post has to be ascertained by the State. Substantive capacity refers to the capacity in which a person holds the post and not necessarily to the nature or character of the post. To approximate to the official diction used in this connection, we may well say that a person is said to hold a post in a substantive capacity when he holds it for an indefinite period especially of long duration in contradistinction to a person who holds it for a definite or temporary period or holds it on probation subject to confirmation.*
>
> *32. Once we understand 'substantive capacity' in the above sense, we may be able to rationalize the situation. If the appointment is to a post and the capacity in which the appointment is made is of indefinite duration, if the Public Service Commission has been consulted and has approved, if the tests prescribed have been taken and passed, if probation has been approved, one may well say that the post was held by the incumbent in a substantive*

capacity."

In ***O.P.Singla and another Vs. Union of India and others***[8] *Chief Justice* Chandrachud, speaking for the majority observed (interpreting the provisions of the Delhi Higher Judicial Service Rules,1970), that it is difficult to appreciate whether any distinction can be made between direct recruitees who are appointed to substantive vacancies in the service on the recommendation of the High Court and promotees who are appointed in consultation with the High Court to the post in the service, in the matter of seniority. The Delhi Rules provided for appointment of promotees to temporary posts in the service and also for appointment of promotees to substantive vacancies in the service on a temporary basis. The Court held that promotees appointed to the service either under Rule.16 or Rule.17 must be considered as belonging to the same class as direct recruites appointed under Rule-5(2), since they perform similar functions, discharge identical duties and bear the same responsibilities as direct recruits. They (the promotees) are appointed on a regular basis to posts in the service in the same manner as direct recruits are appointed. The only distinction being that while direct recruits are appointed on the recommendation of the High Court, promotees are appointed in consultation with the High Court. The Supreme Court held that no distinction could therefore be made between direct recruits and promotees appointed to the service, in the matter of their placement in the seniority list. Exclusion from the seniority list of those promotees who are appointed to posts in the service, whether such appointment is to temporary posts or to substantive vacancies in a temporary capacity, will amount to violation of the equality rule, since similarly situated persons are treated dissimilarly in a matter which constitutes an importance facet of their career, held the Supreme Court (para.28 of the AIR

report).

In ***O.P.Garg and others Vs. State of U.P. and others***[9] the Supreme Court had again to consider *inter se* seniority disputes amongst promotees and direct recruites of the Uttar Pradesh Higher Judicial Service. After holding that the service consists of permanent as well as temporary posts; that "substantive vacancy" was not defined under the 1975 Rules; that under Rule.4(4) of the 1975 Rules temporary posts were created after additions to the permanent strength of the cadre and form part of the cadre; that appointments under Rule.22 of the 1975 Rules can be made to permanent as well as temporary posts, the Court held that as long as the temporary posts have an independent existence and form part of the cadre/strength, the appointment against the said post has to be treated as substantive appointment.

Again in ***Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra (***[10]**),** a Constitution Bench affirmed the principle laid down in ***S.B.Patwardhan*** (6supra) and reiterated that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority and seniority cannot be determined on the sole basis of confirmation. The Court held that if an appointment is made by way of a stop-gap arrangement, without considering the claims of all eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. However, if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude

the officiating service for the purpose of seniority and to hold otherwise would be discriminatory and arbitrary. The Apex Court in this judgment affirmed this principle which had been expressed in other cases in the past including ***Baleshwar Dass*** (5 supra), ***Delhi Water Supply and Sewage Disposal Committee Vs.R.K.Kashyap([11])*** and ***Narender Chadha Vs. Union of India([12])*.**

In ***Secretary State of Karnataka and Others Vs.Umadevi and others ([13]),*** a Constitution Bench had occasion to restate the law on an analysis and synthesis of a vast catalogue of precedents. The issue before the Court was the legitimacy of claims for absorption, regularization or permanent continuance of temporary, contractual, casual or daily-wage employees. In unambiguous terms, ***Umadevi*** (13 supra) laid down the law that no directions (under Article.226) could and should be issued for absorption, regularization or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme, in particular of Articles.14 and 16 and the governing statutory rules relating to qualifications and recruitment procedures. However, in para.55 **Umadevi** clarified that irregular appointments (not illegal appointments) of duly qualified persons appointed in duly sanctioned vacant posts and who continued to work for 10 or more years but without the intervention of orders of Courts or of Tribunals, could be considered by the executive for regularization of services and in the light of the Court's ratio. The Apex Court held that the Union or the State Governments and their instrumentalities must take steps to regularize as a one-time measure, the services of such irregularly appointed who had worked for ten(10) years or more in duly sanctioned posts.

From the raft of binding precedents on this aspect, this Court is satisfied that on application of clear principle to the concrete

facts of the case, the ascription “temporary” appended to the petitioner’s initial appointment had no rational justification or basis and must be ignored. The petitioner has been continuously on duty in the State Higher Judicial Service since his joining the post in Gr.II on 16-10-1993. He was never reverted for want of vacancy. He was appointed to a clear vacancy of indefinite duration and on due recommendation of the High Court. He is not shown to have usurped a vacancy allocable to Direct Recruits. The petitioner’s tenure, since inception was neither procedurally flawed nor adventitious or fugitive. He must thus be treated as substantively appointed to the post. The petitioner is consequently entitled to a position in the seniority *vis-à-vis* other members of the Andhra Pradesh State Higher Judicial Service including the respondent Nos.2 to 5. He cannot be considered as not a member of the service. Since we have held hereinabove that even his initial appointment in 1993 was substantive in character, notwithstanding the label “temporary”, the petitioner is entitled to a membership in the seniority list alongside respondent Nos. 2 to 5. What position of seniority the petitioner is entitled to in relation these respondents would depend on a resolution of the other issues as well.

ISSUE NO.(b)

The petitioner’s appointment order is dated.17-09-1993. Respondent Nos.2 to 4 were appointed by an order dated.28-09-1993. The 1st respondent issued a composite order of posting dated.04-10-1993 to the petitioner, respondent Nos.2 to 4(direct recruits) and two other Officers appointed by transfer. The petitioner alleges that the 1st respondent had delayed issuing him a posting order earlier to the order of appointment and posting of respondent Nos.2 to 4 to enable respondent Nos.2 to 4 to gain seniority over him, an allegation clearly and categorically denied

by the 1st respondent. We have called for and perused the concerned file from the 1st respondent to ascertain whether there is any material basis for this apprehension and allegation of the petitioner. We are found no material to justify a conclusion of a conscious or deliberate procrastination by the 1st respondent in issuing a posting order to the petitioner.

It is an established practice that the administrative business of the High Court is carried on also though committees of judges. The appropriate committee of the High Court met on 01-10-1993 and ordered the postings and transfers of seven (7) Officers including the petitioner and respondent Nos. 2 to 4. The consequent notification was issued by the 1st respondent on 04-10-1993.

This is a normal and usual incident of consideration of administrative business by the appropriate committee of the High Court. Postings and transfers of Judicial Officers is among the functions of the High Court. It performs other functions as well. Adjudication of a vast catalogue of disputes that come before it is also a function in the myriads of judicial and administrative functions that the High Court performs. A reasonable time lag between the emergence of an event requiring a decision and the decision proper is inevitable in the scheme of things. We are satisfied that the issuance of a composite posting order by the 1st respondent on 04-10-1993 (to the petitioner and respondent Nos.2 to 4), is regular and is not actuated by any sinister considerations as alleged by the petitioner.

Relying on the decision of the Supreme Court in ***P.K.Chinnasamy v Government of Tamil Nadu and others***([14]), it is contended on behalf of the petitioner that since there is a public law obligation of the respondents 1 and 3 that the petitioner should be given a posting and work commensurate to his status

and this obligation was violated by the 1st respondent in postponing the issue of posting orders from 17.9.1993 to 4.10.1993, his seniority should be reckoned from the date of his order of appointment i.e., 17.9.1993. In **Chinnasamy** the appellant a Deputy Transport Commissioner proceeded on casual leave for four days whereafter he was transferred to Madras. He was not given posting and work commensurate to his status. He moved the High Court alleging *mala-fides* and improper treatment as a public officer. The High Court refused to interfere. He then appealed to the Supreme Court. In the context of the peculiar facts and circumstances of the case and in the context of the long delay by the State Government in giving the appellant appropriate posting order and allotting work to him, despite three adjournments before the Supreme Court and despite a representation by the counsel for the State that orders of posting would be issued, the Supreme Court observed that since appellant was a public officer paid out of the consolidated fund it was the obligation of the respondent-State to give him a proper posting and extract work from him. Accordingly the respondent-State was directed to give an appropriate posting to the appellant within the specified time and thereafter that he be assigned normal official work as contemplated under the rules in respect of the post he was assigned to. This decision is not an authority for the principle that seniority should be determined with effect from the date of an order of appointment.

On analysis of the facts in this case we have concluded that there was no inordinate, inexplicable or arbitrary postponement of the order of posting. The time lag between the petitioner's date of appointment by the order dated 17.9.1993 and issuance of a posting order by the 1st respondent on 4.10.1993, was a normal administrative event and circumstance.

The other aspect of this issue is whether his earlier order of

appointment entitles the petitioner to seniority over respondent Nos. 2 to 5. Neither Rule.33(b) of the General Rules, nor Rule.6 of the Special Rules supports this creative claim of the petitioner. Determination of seniority according to the date of an order of appointment is not a principle recognized in any of the relevant rules. Rule.6 of the Special Rules which is a specific Rule for determination of seniority in the Andhra Pradesh State Higher Judicial Service mandates determination of seniority with reference to the date from which an Officer is continuously on duty in a category of the service.

Sri Sitaramaiah the learned Senior Counsel pegs the above claim on the support of the judgment in ***Dr.Amarjit Singh Ahluwalia Vs. The State of Punjab and Others ([15]).*** The dispute that had to be resolved by the Supreme Court arose in the context of integration of the Provincial Civil Medical Service and the Public Health Service of the State of Punjab, with effect from 15-07-1964. To provide guidance for determination of the *inter se* seniority of Officers drawn from two erstwhile services should be determined in the integrated service, the State Government issued a memorandum dated.25-10-1965 Clause 2(ii) of the Memorandum provided that the seniority of Deputy Directors and Assistant Directors in the cadre of Public Health Service on integration in PCMS-I should be determined with reference to the length of continuous service from the date of appointment in the group subject to the condition that the seniority of a person in the parent seniority list will not be disturbed. According to this guideline/principle, the criterion for adjusting *inter se* seniority of the Officers coming from the two services is the length of continuous service of each from the date of appointment in his group. Interpretation of what constitutes “date of appointment” thus became the bone of contention. Paragraph No.10 of the judgment sets out the interpretation and the resolution:

" *10. We do not, however, think that the order dated December4,1967 providing that the seniority of respondent Nos.3 to 19 shall be reckoned from the date of their appointment, namely, April 8,1964 constituted a departure from the principle of seniority laid down in clause (2)(ii) of the memorandum dated October 25,1965. The test for determining seniority in the integrated cadre laid down by clause (2)(ii) of the memorandum dated October 25,1965 was the length of continuous service from the date of appointment in the group. The appellant contended that continuous service fin a post could commence only when the incumbent took charge of the post and not earlier and, therefore, though respondent Nos.3 to 19 were promoted under the order dated April,8 1964, their continuous service in the post of promotion in PCMS Class I did not commence until after April 25,1964 when they took charge of their respective posts of promotion and hence the length of their continuous service in PCMS Class I was less than that of Dr.Jagjit Singh and the appellant in Public Health Service, Class I. This contention is fallacious in that it fails to give sufficient importance to the words "from the date of appointment" and ignores the true meaning and effect of the order dated April 8,1964. First let us see what the words "date of appointment" mean. Are they synonymous with "date of the order of appointment"? We think not. An order of appointment may be of three kinds. It may appoint a person with effect from the date he assumes charge of the post or it may appointment him with immediate effect or it may appoint him simpliciter without saying as to when the appointment shall take effect. Where the order of appointment is of the first kind, the appointment would be effective only when the person appointed assumes charge of the post and that would be the date of his appointment. It would be then that he is appointed. But in a case of the second kind, which is the one with which we are concerned since the order dated April 8,1964 appointed respondent Nos.3 to 19 to PCMS Class I with immediate effect", the appointment would be effective immediately irrespective as to when the person appointed assumes charge of the post. The date of his appointment in such a case would be the same as the date of the order of appointment. It is therefore obvious that so far as*

respondent Nos.3 to 19 were concerned the date of their appointment was April,8 1964 and the length of their continuous service in PCMS Class I was required to be reckoned from that date. It is true that respondent Nos.3 to 19 did not assume charge of their respective posts of promotion until after April 25, 1964, but that makes no difference because the length of continuous service is to be counted from the date of appointment on the hypothesis that once the appointment is effective the person concerned is in the post and his service in the post is deemed to have commenced though under the rules governing his conditions of service he may not be entitled to the salary and allowances attached to the post until he assumes charge of the post. The continuous service of respondent Nos.3 to 19 in PCMS Class I, therefore, commenced from April 8, 1964 and since that was longer than the continuous service of Dr.Jagjit Singh and the appellant in Public Health Service Class I, which commenced only on April 25,1964, respondent Nos.3 to 19 were entitled to be placed senior to Dr.Jagjit Singh and the appellant in the joint seniority list of the integrated PCMS Class I."

In **Ahluwalia** (15 supra) the relevant instrument governing the *inter se* seniority of Officers in the integrated service was a State Government memorandum dated.25-10-1965. Clause. 2(ii) of this memorandum specifically enjoined the criterion for adjusting *inter se* seniority of officers coming from the two pre-integrated services, to be the length of continuous service of each officer from the date of appointment in the group. Interpreting this specific provision and in the context of the order of the appointment which specified the appointment to be with "immediate effect", the Supreme Court held that the continuous service of respondent Nos.3 to 19 in PCMS Class I was earlier to the continuous service of Dr.Jagjit Singh and the appellant, in Public Health Service Class-I. Therefore these respondents were entitled to seniority in the joint seniority list of the integrated PCMS Class I, held the Court. This decision is not an authority

for the principle that the date of an order of appointment is an exclusive and relevant criterion for determination of seniority in every situation. Neither the orders of the appointment of the petitioner and of respondent Nos.2 to 5 stipulate that their respective appointments take effect immediately nor does Rule.6 permit seniority to be determined from the date of an order of appointment.

Another decision relied upon on behalf of the petitioner is ***Bhey Ram Sharma v Haryana State Electricity Board***[16]. In this case by an advertisement, dated 30.06.1967 the State Electricity Board invited applications for the post of Assistant Engineer Class-II (Electrical) and Apprentice Engineer (Electrical). The appellants applied for the post of Apprentice Engineer. A condition in the advertisement required apprenticeship for a period of 6 months or such extended period up to a maximum period of 3 years, to be decided by the Board and that after completion of such training they would be considered for appointment to the post of Assistant Engineer Class-II. In the offer of appointment it was specified that the candidates will have to undergo apprenticeship for a period of one year or such period as may be decided by the Board and thereafter would be considered for appointment to the post of Assistant Engineer Class-II. On completion of training, in terms of the advertisement and the offer of appointment the appellants were appointed as Assistant Engineer Class-II w.e.f. 01.01.1969. Another advertisement dated 14.7.1968 was issued by the Board for filling up the post of Assistant Engineer Class-II. Pursuant to that advertisement respondents 2 to 29 applied and were selected. They were appointed between October and December 1968 as Assistant Engineers Class-II. In the seniority list published, these respondents were shown above the appellants. The appellants

contended that as the advertisement specified that they had to undergo apprenticeship for a period of six months and would thereafter be appointed as Assistant Engineer Class-II, had they been so appointed after the expiry of six months, they would have ranked seniors to the respondents. It is in this factual context that the Supreme Court observed that while determining the seniority of an officer the date of his appointment is a more important factor than the date of his joining and that the date of joining is an uncertain event. It however requires to be noticed that in Para-5 of this judgment the court observed: "*It is almost settled that while determining the inter se seniority amongst officers recruited from different sources or between officers appointed by the same process at different times, the date of entering in the service is relevant. A person who enters in the service first shall rank senior unless there is some rule providing otherwise which can be held to be consistent with Articles 14 and 16 of the Constitution".* The factual analysis on which the conclusion of the court was based is set out in Para-6 where the court considered that the appellants were appointed as Assistant Engineers Class-II on April 18th, 1969 w.e.f. 01.01.1969 whereas the respondents were appointed between October and December 1968 and therefore the respondents would rank senior to the appellants as they entered the cadre of Assistant Engineer Class-II before the appellants. The solitary observation in Para-4 in this judgment that "*the date of his appointment is a more important factor than the date of his joining"* cannot be read out of context, nor this observation considered as constituting a ratio of universal application *de hors* the position under the statutory Rules.

It requires to be noticed that the petitioner has not challenged the vires of Rule-6 of the Special Rules which mandates the date from which the officer is continuously on duty in the category of State Higher Judicial Service to be the

determinant criterion for seniority. The petitioner also does not challenge the specification in his order of appointment that it would take effect on the date he joins the post.

Sri Sitaramaiah also placed reliance on a decision of the Supreme Court in ***Tagin Litin v State of Arunachal Pradesh and Ors([17])***. In a different factual context, in para-12 of this judgment the Supreme Court observed that an appointment to a post or posts postulates: (a) A decision by the competent authority to appoint a particular person; (b) Incorporation of the said decision in an order of appointment; and (c) Communication of the order of appointment to the person who is being appointed. In para-13 the court held that all three requirements must be fulfilled for an appointment to be effective. In this case we are not concerned with the question as to when the petitioner's appointment as District & Sessions Judge Grade-II became effective. What is in issue is what is the relevant date or criterion for determination of his seniority vis-à-vis respondents 2 to 4 who came from a different stream, of direct recruits. This decision does not provide guidance on this aspect of the matter. As the effective date of appointment is not the recognized criteria for determining seniority. Determination of seniority is governed by the mandate of Rule-6 of the Special Rules.

Another decision on which support is drawn by the petitioner is ***Dr.Harikishan Singh Vs.State of Punjab and others([18])*** . The appellant and the 3rd respondent one Dr.S.S.Sekhon were confirmed in Class-I of the Punjab Civil Medical Service with effect from 26-02-1955 and 28-02-1955, respectively. Dr. Pritam Singh was appointed as a Chief Medical Officer, a Class-I post on 16-07-1962 and joined thereat on 04-08-1962. Later the Government, after a public notification invited applications for the post of Chief Medical Officer. Dr.Pritam Singh

applied. Dr.Pritam Singh was selected and appointed by an order dated.10-05-1963. He was later confirmed in the post with effect from 17-04-1963 as the Principal Medical Officer, Chandigarh. On 20-10-1966 Dr.Pritam Singh was appointed in the Selection Grade of Punjab Civil Medical Services with effect from 20-10-1966. The appellant assailed the order dated.20-10-1966 appointing Dr.Pritam Singh to the Selection Grade on several grounds. On an analysis of the relevant facts (which are not necessary to be considered in this analysis), the Supreme Court while holding that direct recruitment to Selection Grade in Class-I is also permissible under the relevant rules, declared that as the appointment of Dr.Pritam Singh to Selection Grade was earlier to such appointment of the appellant and the 3rd respondent, Dr.Pritam Singh was entitled to be considered senior. It requires to be noticed that as recorded in Para.9 of this judgment, the appellant and the 3rd respondent were also appointed to the Selection Grade but with effect from 01-11-1966 about 10 days subsequent to the appointment of the Dr.Pritam Singh. The dispute in the case as urged by the appellant was that as the appellant and the 3rd respondent had been senior to Dr.Pritam Singh in the time scale of Class-I service, Dr.Pritam Singh could not have been placed senior to them in the Selection Grade. This contention was negatived on the basis of other provisions of the Rules. In Para.16 of this Judgment the Supreme Court affirmed the view taken by the High Court that the fixation of seniority in the Selection Grade, in the absence of any relevant rules with regard to fixation of seniority, must be determined by the earlier appointment of Dr.Pritam Singh. This case is also not an authority for the principle that an anterior order of appointment would in every event be the determinant criterion for seniority. (emphasis added).

The learned Senior Counsel for the petitioner also placed reliance on the decision of the Supreme Court in ***Mohan Lal Vs. the Management of M/s.Bharat Electronics Ltd. ([19])*** for the petitioner's claim that his seniority be reckoned from the date of his order of appointment i.e., 17-09-1993 and not 16-10-1993 when he joined duty pursuant to the order of posting dated.04-10-1993. In this decision the Supreme Court considered the scope of Sec.25-B(1) and (2) of the Industrial Disputes Act,1947. Sec.25(f) of this Act specified the conditions precedent for retrenchment from service. Sec.25-B defined and delineated the contours of the expression "continuous service". It is in this context that the Supreme Court analyzed the provisions of Sec.25-B(2) and held that this provision incorporates another deeming fiction for an entirely different situation. It comprehends a situation where a workman not in continuous service within the meaning of Sub-section.1, for a period of one year or six months, shall be deemed to be in continuous service under an employer for a period of one year or six months, as a case maybe, if the workman during the period of 12 calendar months, preceding the date with reference to which calculation is to be made, had actual worked under that employer for not less than 240 days. This decision is wholly extraneous to the issue in the present case and does not in any way support the claim of the petitioner. The petitioner claims that though the date of his joining duty is 16-10-1993 (pursuant to an order of posting dated.04-10-1993), he must be deemed to be continuously on duty since 17-09-1993, the date of the order of his appointment. There is no legal principle and no statutory instrument, which permits the creation and application of such fiction. There is nothing in the scheme of the General Rules or the Special Rules, which implicates such fiction and enjoins its application. Creation of legal fictions is essentially a legislative function. Normatively the judicial function is interpretive and not

constitutive of the law. This contention does not commend acceptance.

In the case on hand, the petitioner's order of appointment (dated.17-09-1993) clearly specified that the appointment would take effect from the date on which the Officer assumes charge. The petitioner assumed charge on 16-10-1993. On principle and fact therefore, it is futile for the petitioner to claim seniority from the date of the order of the appointment. In urging such a claim the petitioner has lost sight of the specification in his order of appointment and glosses over the mandate of Rule.6 of the Special Rules.

The petitioner is not entitled to seniority from the date of the order of his appointment.

On issue No. (b) we reject the claim of the petitioner and hold against him.

Issue Nos.(c) & (d):

These two issues could conveniently be considered together. The literal (preferred rule) interpretation of Rule 1 of the Special Rules compels the inference that category-II of the service (District & Sessions Judge Grade-II) comprises all the posts enumerated in category-II irrespective of whether the posts are permanent or temporary. Apart from this textual signal, the judgment of the Division Bench of this court in ***T.H.B Chalapathi*** (1 supra) and of the Supreme Court in ***V.Bhaskar Rao*** (2 supra) place the mater beyond disputation. Category-II of the A.P State Higher Judicial Service consists of all posts, permanent and temporary which have been designated District & Sessions Judges Grade-II. It is also clear from this precedential authority that the special Rules provide a complete scheme for the appointment and seniority of the members of the service; the temporary posts in Grade-II are part of the service and seniority

has to be counted on the basis of the length of the service including service against a temporary post; and that Rule-6 permits the counting of the total period of service from the date a person is on duty against a post in the category.

The fact that respondent Nos. 2 to 5 were appointed to posts, within the 33 1/3rd% of the permanent posts allocable to direct recruitment is a wholly irrelevant circumstance for determining the seniority between the petitioner and the respondent Nos. 2 to 5. It is neither pleaded nor established from the record that the petitioner was appointed to a permanent post in Grade-II in excess of the quota available (in permanent posts) for appointment by transfer (under Rule 2(a)(i) read with the proviso to Rule 2 (a)(ii) of the Special Rules). The petitioner was never reverted since his joining duty as District & Sessions Judge Grade-II on 16.10.1993 pursuant to the order of appointment dated 17.9.1993. Whether the petitioner was appointed by transfer to a permanent post allocable to the quota earmarked for appointment by transfer or to a post other than a permanent post, is also an enquiry that is not germane to the determination of seniority, in the light of the direct and binding authority of **T.H.B.Chalapati and V.Bhaskar Rao**(1 and 2 supra).

It is contended by Sri Sitarama Murthy on behalf of the 1st respondent, a contention vigorously echoed by Sri Adinarayana Rao (for R-5) and Sri G.Vidyasagar (for R-3), that the *inter se* seniority of respondents 2 to 5 having been determined by the 1st respondent (selection authority) in the manner reflected by the 6th respondent's order in G.O.Ms. No. 843, the petitioner – an unreserved candidate, cannot be permitted to intersperse the seniority position amongst respondents 2 to 5, which is predicated upon the operation of the relevant roster points. Rule-2(a) of the Special Rules mandates

that Rule-22 of the General Rules (excluding in respect of Physically Handicapped persons), shall apply for appointment by direct recruitment to category-II. The determination of seniority must reflect the relevant roster points followed, chorus the respondents.

In ***Union of India v Virpal Singh Chauhan (***[20]***)*** and ***Ajit Singh Januja v State of Punjab (***[21]***)***, the Supreme Court pointed out that the rule of reservation enables accelerated promotion (or exclusive consideration for appointment), but does not accord accelerated consequential seniority.

In ***B.S.Yadav and Others v State of Haryana and others (***[22]***)*** the provisions of the Punjab Superior Judicial Service Rules, 1963 were considered. This was again a case involving a seniority dispute between promotees and direct recruit officers of a superior judicial service. The petitioners before the Supreme Court (u/art.32 of the Constitution) were promotee officers who were aggrieved that their seniority qua direct recruits was made to depend upon their respective dates of confirmation in the superior judicial service; that even in the context of availability of a substantive vacancy the confirmation of a promotee is postponed arbitrarily and indefinitely; and that the High Court applied the principle of rotation between the promotees and direct recruits at the confirmation stage when the statutory rules merely provided for a quota. Rule-8 of the relevant Punjab rules mandates that recruitment to the service be made by promotion and by direct recruitment and that 2/3rd of the total number of cadre posts be manned by promotee officers and 1/3rd by direct recruits. Considering the factual and statutory position the Supreme Court (Constitution Bench) held that the reservation provided in Rule-8 is intended to be applied at the stage of initial appointment only; that the method of confirmation by rotation of direct recruits and

promotees, irrespective of and *de hors* the quota rule is illegal. The court also held that confirmation is not part of the process of appointment and that recruitment to the service and confirmation are distinct and separate matters. It was held that the superimposition of Rule-8, which fixes the quota at the stage of recruitment, on the rules relevant to confirmation and seniority is contrary to the basic constitutional concepts governing judicial service. Following the principle laid down in ***A.K. Subraman v Union of India*** ([23]), ***N.K.Chauhan v State of Gujarat*** ([24]), ***B.S.Yadav*** (22 supra) held that the quota rule is enforceable at the time of initial recruitment alone and not at the stage of promotion; that the rule of rotation cannot be read into the rule of quota; and that the ratio of 2:1 provided under Rule-8 must be applied at the stage of recruitment, but not at the stage of confirmation.

Sri Sitaramaiah, learned counsel for the petitioner cited the decision in ***D.Ganesh Rao Patnaik and Others Vs. State of Jharkand and others***([25]) to contend that the seniority of a direct recruit vis-à-vis promotee officer must be determined with reference to the date from which they may have been allowed to officiate continuously in the cadre of the service. This Court's attention was drawn to the observations in paras 9 & 10 of ***Ganesh Rao Patnaik***. ***Ganesh Rao Patnaik*** had a meandering litigious history. The provisions of the Bihar Superior Judicial Service Rules, 1946 came up for consideration. The rules provided for appointment to the post of Assistant District &Sessions Judge from two sources – direct recruitment from the Bar and by promotion from amongst members of the Bihar Civil Service (Judicial Branch). The Rules further provided that 1/3rd of the posts in the cadre of the service shall be filled by direct recruitment and 2/3rd by promotion. Factually, direct recruitment to the Superior Judicial Service was not regular and posts of Addl.

District Judges were excessively filled by promotion. After a direct recruitment in 1979, an advertisement was issued in 1985 for direct recruitment. Even thereafter no progress towards selection was made. The writ petition was therefore filed seeking a direction to make direct recruitment from the Bar. A Full Bench of the High Court issued a direction to the State Government and the High Court on the administrative side to make appointments by direct recruitment within six months with a further direction that the vacancies meant for direct recruitment shall not be filled by promotion or vice versa and continuity and parity should be maintained until altered by the process of law. Consequently, an advertisement was issued in 1989 for direct recruitment. Eventually a merit list containing the names of 129 candidates was declared on 24.11.1990 valid up to November 1991. From this merit list the High Court recommended the names of 32 candidates in the order of merit for appointment as an Addl. District & Sessions Judge in the quota for direct recruitment. Appellants were among 9 of the 32 candidates recommended for such appointment. Around the same time the High Court had also recommended the names of the 23 Subordinate Judges including respondents Nos. 4 to 11 for promotion to temporary posts of Addl. District & Sessions Judges and an advertisement was issued in 1989. The total number of permanent and temporary posts in the Superior Judicial Service was 251. If the quota for direct recruitment had to be worked out for all these posts, 83 posts were allocable to direct recruitment and the remaining 168 posts for promotees. However, promotees far exceeded their quota of 168. The State Government had assumed that the cadre of Addl. District & Sessions Judges consisted only of permanent posts and temporary posts cannot be taken into consideration for working out the quota for direct recruitment. In 1991 a writ petition was filed seeking a direction

that the temporary posts should also be reckoned for computing the quota for direct recruitment. On 25.4.1991 the High Court issued an interim direction that the State Government may make appointments to the Superior Judicial Service by promotion but such promotion and the seniority of persons so promoted shall abide by the result of the writ petition or any order of the court; the direction should be incorporated into the letters of appointment by promotion as a condition of the promotion and unless such condition were accepted no appointment/promotion must be give effect to. On 30.4.1991 the State Government issued two separate notifications. By one, 321 persons including the appellants were appointed against the quota for direct recruitment. By another notification several persons including the contesting respondents were appointed by promotion. The notification relating to promotees incorporated the condition directed in the interim order of the High Court dated 25.4.1991 (supra). In fact the promotee officers including respondent Nos. 4 and 6to 11 had submitted consent letters/undertakings to abide by the conditions. Respondent No.5 did not submit the undertaking but was permitted to join. The promotion of respondents Nos. 4 to 11 came into effect much later to 30.4.1991. Subsequently the writ petition filed in 1991 was decided on 16.12.1991 holding that the cadre of superior judicial service included both permanent and temporary posts and therefore 1/3rd quota for direct recruitment must be calculated taking into account permanent as well as temporary posts. The Division Bench of the High Court also directed that apart from the 321 officers appointed by direct recruitment further appointment should be made from the same merit list dated 24.11.1990 so as to fill up the complete quota by direct recruitment. The life of the merit list was extended for a further period of six weeks w.e.f 24.11.1990. The State Government preferred an appeal against this decision. In ***State of***

Bihar v Madan Mohan Singh ***(*** [***[26]***](#) ***)***, the Supreme Court considered only one aspect i.e., the validity of the direction issued by the High Court that further appointments be made from the same merit list. The State appeals were allowed; the direction by the High Court to fill other vacancies from the same list was set aside; and the Government was directed to issue a fresh advertisement. The Supreme Court expressed no opinion on the issue whether temporary posts should also be taken into consideration for calculating the quota for direct recruits.

Thereafter, the High Court by an order dated 4.9.1996 declared that the 32 directly recruited officers be treated as seniors to the 23 officers appointed by promotion. The promotees then filed a writ petition. During the pendency of the writ petition the State of Bihar was bifurcated and the State of Jharkhand came into existence w.e.f. 15.11.2000. The appellants and the contesting respondents and some others were provisionally allotted to the new State and thereat the names of the appellants figured above the names of the contesting respondents in accordance with the administrative decision of the Patna High Court dated 4.9.1996. In January 2002 two of the promotee officers (respondents Nos. 9 and 11) represented to the Jharkhand High Court seeking seniority over the direct recruits. A committee of the High Court recommended grant of seniority to the promotees and the High Court by an administrative order dated 29.8.2002 accepted the recommendation of its committee and declared the contesting respondents/promotees as senior to the direct recruits/appellants. The appellants filed a writ petition, which was dismissed. Thus the issue came to be considered by the Supreme Court in ***Ganesh Rao Patnaik*** (25 supra). On an analysis of the rules the Supreme Court held that “cadre” means the entire cadre of the Bihar superior service and therefore there is no warrant for excluding temporary posts. At para-16 the

Supreme Court held that for determining the quota of direct recruits both temporary and permanent posts have to be counted and taken into consideration and their quota cannot be confined to permanent posts alone. The court affirmed the Division Bench judgment of the Patna High Court which had ruled that temporary posts should also be counted for determining the 1/3rd quota for direct recruits. After this conclusion on law and on the interpretation of the provisions of the statutory rules, the Court found that the promotion given to the contesting respondents was not in accordance with law (as they were appointed in excess of the quota available to promotees). The court held that the contesting respondents can under no circumstances claim seniority over the appellants and that the contrary view taken by the Jharkhand High Court on 29.8.2002 on the administrative side and on 1.4.2003 in its judgment (under appeal) was erroneous.

It requires to be noticed that Rule-16(e) of the Bihar Superior Judicial Service Rules 1946 is specific that seniority of a direct recruit vis-à-vis a promotee officer shall be determined with reference to the dates from which they have been allowed to officiate continuously in the posts in the cadre of the service. The proviso to this rule enjoined that when a direct recruit and promotee officer are appointed on the same date, the promotee officer shall rank senior to the direct recruit. However, as the Supreme Court found on facts that the respondents-promotee officers had been appointed in excess of the quota for promotees (in view of the conclusion that the cadre consists of both permanent and temporary posts and the quota should be computed taking the entire strength of the cadre), the Supreme Court held that the promotee officers could not claim seniority on the basis of appointment to posts not available for appointment by promotion. The Supreme Court did not hold that the relevant rule of seniority – Rule 16(c) was invalid or must not be given effect

to. The rule was considered inapplicable in the specific factual context, where promotee officers were appointed in excess of their quota.

In the light of the textual position i.e., Rules 1, 2, 2A, 5 and 6 of the Special Rules and fortified by the authority of the precedents considered above, we hold that Rule 22 of the General Rules (to the extent applied by the prescriptions in Rule-2A of the Special Rules) is applicable only at the stage of recruitment. Having regard to the explicit statutory position, i.e. the cadre of category-II of the AP State Higher Judicial Service comprises of permanent and temporary posts as well; that the proviso to Rule2-(a)(ii) of the Special Rules mandates a quota of 33 1/3rd% of direct recruitment only in the permanent posts of the cadre; and Rule-6 of the Special Rules ordains determination of seniority with reference to the date from which an officer is continuously on duty in a category of the service (whether the post be permanent or temporary), we hold that the determination o f *inter se* preference by the 1st respondent amongst direct recruits to category-II has no bearing on the determination of seniority *inter se* direct recruits and promotees. This is so since Rule-2A of the Special Rules and consequently the roster in Rule-22 of the General Rules is alien to appointment to category-II of the service by transfer.

At this stage of the analysis, we consider the effect of a judgment of the Supreme Court in ***Suresh Chandra Jha Vs. State of Bihar and others([27])***. This decision is relied upon by Sri Adinarayana Rao (the learned counsel for the 5th respondent) to contend that as the 5th respondent was determined to be the first in the order of preference by the 1st respondent (the selection authority) and such preference was operationalised by the order

of the 6th respondent (G.O.Ms.No.843) notifying the 5th respondent's seniority over respondent Nos.2 to 4, the seniority of the 5th respondent must prevail over the petitioner as well. In **Suresh Chandra Jha** (27 supra) responding to an advertisement for appointment to the posts of Assistants in a Private Institute for Technology the appellant and several others applied. After a process of selection by a written test, five (5) persons including the appellant were appointed. The appellant was appointed by the order dated.18-07-1991 granting six (6) weeks time to report for duty to the office at Laheriasarai, Darbhanga. Respondent No.8 was issued appointment letter dated.22-07-1981 and joined on the same day. The appellant received the appointment letter on 23-07-1981 and joined on 24-07-1981. On the basis of a provision in the Bihar Private Engineering College Control Act,1990 the 8th respondent was retained in the service but not the appellant. He questioned the procedure. A learned single Judge of the Patna High Court found in his favour and held that the State Government's order dated.31-01-1991 absorbing some of the respondents into service was contrary to law and that the procedure adopted of determining as to who had joined the college earlier, was wrong. As admittedly the selection was on 18-07-1981 and six weeks time was granted for joining the fortuitous circumstance that the 8th respondent had joined earlier would not justify making him senior to the appellant despite the appellant ranking much higher to the 8th respondent in the merit list, held the learned single Judge. On an appeal by the 8th respondent, the Division Bench of the High Court held that seniority must be reckoned on the basis of the date of the joining. Aggrieved the appeal was preferred to the Supreme Court. Relying on an earlier decision in ***Chairman, Puri Gramya Bank Vs. Ananda Chandra Das([28])*** the Supreme Court reiterated

the principle that seniority must not be determined on the basis of joining reports given by the candidates selected for appointment by direct recruitment and length of service on such basis. It must however be noticed that in para.8 of the judgment the Supreme Court clarified that since there was no rule in operation, ranking as per the merit list must decide the respective seniority. The appeal was partly allowed. It is important to bear in mind the caveat apparent from the observations in para.8. The Supreme Court did not lay down a universal principle for determination of seniority. On an application of the equality principle the Supreme Court held that in the absence of a rule governing seniority ranking in the merit list must determine the seniority.

In the present case there is no order either of the 1st respondent or the 6th respondent-appointing authority determining the *inter se* ranking of the petitioner and the respondent Nos.2 to 5 which could offer a guidance as to their *inter se* preference for determination of seniority. Even otherwise there is a specific and special rule – Rule.6 which mandates the method and procedure and lays down the criteria for determination of *inter se* seniority of persons appointed to the posts of District and Sessions Judge, Gr-II. This statutory mandate must prevail.

Another precedent relied upon on behalf of the 5th respondent is ***Sanjay Dhar Vs. J&K Public Service Commission and another([29]).*** The facts of this case were peculiar. The appellant was admitted to the Bar with effect from 29-01-1990 by the J&K High Court. Since October, 1990 however he was practicing exclusively in the Delhi High Court. In December-1992 applications were invited by the Commission for the post of Munsif. Rule.9 of the relevant recruitment rules specified that a candidate must have put in at least two (2) years

practice at the bar by the date on which he submits an application and must produce a certificate to this effect from the District Judge within the local limits of whose jurisdiction he practiced at the Bar. The appellant obtained an experience certificate from the Registrar, Delhi High Court and submitted it to the Commission. The Commission raised an objection that an actual practice certificate from the District Judge based on a personal knowledge or office records of the Court was not produced. The appellant then had the certificate (issued by the Registrar, Delhi High Court) counter-signed by the District Judge, Delhi. Even this certificate was not acknowledged as valid by the Commission. The appellant challenged the rejection, participated in the written examination and interview on the basis of interim order of the High Court and was selected on merit. One vacancy was kept reserved. During the pendency of the writ petition the Service Commission advertised fresh vacancies to the post of Munsif in 1996. The appellant again applied, was selected and appointed as Munsif on 05-12-1997. The petitioner claimed that though his principal grievance with regard to selection and appointment did not subsist on account of the subsequent selection and appointment, he lost his seniority on account of the unlawful rejection of his application earlier. He claimed the benefit of seniority without monetary benefits. Relying upon the principles enunciated in an earlier decision of the Court in ***Madan Lal Vs. State of J&K ([30])***, the Court in **Sanjay Dhar (**29supra) held that the object of Rule.9 of the J&K Civil Service (Judicial) Recruitment Rules,1967 is to secure recruitment of practicing Advocates in the Judicial Service regardless of where they were practicing, in the High Court or District Courts, the Registrar of the High Court is a responsible officer who is basically a Judicial Officer of the rank of a District Judge or Additional District Judge. The certificate issued by him was counter-signed by the District

Judge and that was enough to satisfy the requirement of Rule.9. In the specific factual context, in particular the fact that the appellant had participated in the earlier process of selection and was successful thereat and ought not to be denied appointment therefor, the Court held that it was an appropriate case for grant of a notional place in the seniority consistent with the order of merit determined at the earlier selection. Accordingly, the Court directed that the appellant should be deemed to have been appointed along with other appointees under the appointment order dated.06-03-1995 and should be assigned a place of seniority consistent with his place in the order of merit in the select list, though without monetary benefits. The judgment in this case is wholly fact specific. It does not spell out a ratio of wider application. There was no specific rule determining seniority as in the present case. On facts too, the petitioner and the 5th respondent were not subjected to an integrated process of selection in pursuance of which the 5th respondent was unlawfully denied appointment. Also the 5th respondent does not challenge the vires of Rule.6 of the Special Rules. He cannot therefore escape the rigor of its application.

On behalf of the respondents, in particular, the 5th respondent, it was further urged that since the recruitment process for the direct recruits was initiated in 1991 much earlier to the proposal by the 1st respondent for appointment by transfer of the petitioner, it is in any event inequitable that the petitioner should be considered senior to the respondent Nos.2 to 5. The process of direct recruitment was agonizingly prolonged and the respondents could not loose seniority on this account, is the contention. This contention has no support in principle. Laws and legal principles are human instruments and cannot provide comprehensive solutions for every eventuality in an endemically

imperfect and incoherent world. Delay in the process of direct recruitment, occasionally inordinate delay is inherent to the process of direct recruitment. A substantive solution to such issues must be addressed by the Legislative or executive branch of the State. In any event, in the light of the clear mandate of Rule.6 of the Special Rules, which has not been challenged, effect must be given to its provisions. This Court would derogate from its constitutional authority and limits in ignoring the clear mandate of a specific statutory rule.

To counter the above claim of the 5th respondent reliance was placed on behalf of the petitioner on the judgment in **Prafulla Kumar Swain Vs. Prakash Chandra Misra & Others** (***[31]***). On facts, the 1st respondent was directly recruited to the Orissa State Forest Service Class-II by the Public Service Commission in 1979. After two years training he was appointed in 1981. Treating him to be a recruit of 1979 the Orissa Administrative Tribunal upheld his claim to seniority over the promotees who were so promoted between the date of the 1st respondent's recruitment and the date of his joining service after training. Interpreting the words "recruitment" and "appointment" used in two separate Rules, the 1959 and the 1984 Rules, and Regulation.12(c) which provided that service could count only from the date of appointment to the service after successful completion of the course of training, the Supreme Court held that direct recruits cannot claim seniority from the date of their recruitment. Though facially this decision pronounces that seniority would count only from the date of appointment and not recruitment, the conclusion is again based upon the specific rules that were analyzed and interpreted by the Court. Eventually therefore it is the relevant statutory rule which should determine the administrative decision with regard to determination of

seniority. Fidelity to a statutory rule in operation is inescapable.

In ***Jagidish Ch.Patnaik and Others Vs. State of Orissa and Others (***[32]***)*** the provisions of the Orissa Service of Engineers Rules,1941 were considered. The appellants were appointed on direct recruitment through the Public Service Commission as Assistant Engineers. They claimed seniority over the promotees on the basis of the quota fixed for them and with reference to the vacancy that had arisen against such quota. Rule.26(1) of the 1941 Rules provided that when officers are recruited by promotion and direct recruitment during the same year, the promoted officers shall be considered senior to the Officers directly recruited irrespective of their dates of joining the posts. On facts the Supreme Court noticed that there was no grievance by the direct recruits that there was excess promotion beyond the quota. In this factual context the Supreme Court considered the plea whether the year in which the vacancy accrued could have relevance for determining seniority, irrespective of when persons are recruited. The Court rejecting the plea of the direct recruits (that in view of the inevitable delay in the direct recruitment process, the year in which vacancy arose must be considered relevant for determination of the seniority), held that in view of the provisions of Rule.26 the year in which the vacancy arose and against which the recruitment is made cannot be looked into for determining *inter se* seniority between direct recruits and promotees. As Rule.26 provides that when both streams are recruited in the same year, the promoted officers should be considered senior to the direct recruits and irrespective of the dates of joining, held that the Court cannot impart something into Rule.26 and thereby legislate a new rule of seniority. The plea of direct recruits was rejected.

In the present case also there is no rule of seniority in the Special Rules or even the General Rules for that matter, which

permits the year or date of initiation of recruitment to be a relevant criterion for seniority. Rule.6 of the Special Rules is clear and must operate.

Again, in ***State of Uttaranchal and another Vs. Dinesh Kumar Sharma([33])*** the Supreme Court held that contrary to the relevant provisions in the Rules the date of substantive appointment cannot be reckoned from the date of occurrence of the vacancy. In this case the respondent was appointed to the post of Senior Chemical Assistant, Research (Chemistry Branch), a post in the Subordinate Agriculture Service, Group-I, through the Public Service Commission. The eligibility criterion for consideration for the next higher promotion under the Rules is 15 years service in the Subordinate Agriculture Service Group.1. The respondent became eligible for such promotion in 1992-193. The Uttar Pradesh Agriculture Group-II Service Rules,1955 provided for selection, appointment, probation, seniority and promotion etc. Rule.21 of these rules enjoined that the date of substantive appointment would be basis of promotion. On 01-05-1996 and 01-06-1996 two Class-II posts became vacant on retirement and were available for being filled up by direct recruitment as well as by promotion. On 19-11-1999 the Government issued an order conveying that the respondent was selected for Subordinate Agriculture Service Class-I in the substantive vacancy for the year 1997-98, after consultation with the Public Service Commission. On 04-04-2001 the Uttar Pradesh Government Agriculture Department directed that employees who were already members of the Hill Sub-cadre and posted at Uttaranchal were finally allocated to the Uttranchal Government, in which the respondent's name was shown at serial No.30. The respondent claimed seniority from 1995-96, as the posts fell vacant during that year. The Government rejected the claim. Considering the relevant facts and the position under the

statutory rules, the Court held that the respondent's claim that he be given promotion and seniority from the year in which the vacancy arose in 1995-96, was misconceived. The respondent's actual appointment was in 1999. This can have no retrospective effect. The contrary view taken by the High Court was set aside.

The above decision affords clear guidance and authority for the principle that the date of arisal of a vacancy or the date of initiation of the direct recruitment process cannot be a legitimate criterion for determination of seniority, particularly when the relevant statutory rule clearly mandates a specific and distinct criterion for determination of seniority.

Before concluding the analysis of the precedents cited at the Bar in relation to these issues, the decision in ***Bimlesh Tanwar v State of Haryana and Others***([34]) must be considered. This decision is cited by Sri Adinarayana Rao in support of the 5th respondent's claim that the *inter se* seniority of the said respondent as determined by the 1st respondent must prevail and be given effect to. In ***Bimlesh Tanwar*** (34 supra) the court was considering the position under the rules relating to appointment of Subordinate Judges in the Haryana Civil Service (Judicial Branch) 1951. On 16.8.1988 the Haryana Public Service Commission issued an advertisement notifying 24 vacancies in the service. The specified posts were earmarked for general category, SC, ESM and BC. On 6.2.1989 the State sent up a requisition for anticipated vacancies up to 31.12.1990 specifying the vacant posts in each of the categories. On 27.7.1989 the Commission recommended 21 names for 28 vacancies – 11 for the General Category, 5 for SC, 3 for BC and 2 for ESM. The results of the examination was published on 15.9.1989 and therein the appellant was at Sl.No.33 whereas respondents 8 to 11 were at Sl.Nos. 14, 15, 16 and 18. On 6.2.1989 it was notified

that the existing and notified vacancies would be increased by 4 with a reservation of one for SC and one for BC and two for general candidates. As per the result published by the Commission, 42 candidates were declared qualified. Of the successful candidates 3 persons at Sl.Nos. 27, 39 and 42 belong to BC; 5 including the appellant belonging to SC were at Sl.Nos. 30, 33, 38, 40 and 41 of the select list. Two persons were selected from the category of ESM. Though 18 posts were available to the general category only 8 persons belonging to this category were appointed by an order dated 9.12.1989. Respondents 9 and 10 and three other candidates who figured in the merit list but were not appointed, filed a writ petition seeking inclusion of their names in the register to be maintained under Rule-1 of Part-D of the Rules and for filling up the existing and anticipating vacancies during the 2 years from the date of publication of the list. The writ petition was allowed and the State was directed to forward the list of 42 candidates who were qualified in the examination, to the High Court and the High Court was directed to enter their names in the register in the order of merit. The High Court on the administrative side addressed a letter dated 20.8.1991 to the State to comply with the order in the writ petition and issue an order for appointment of the three candidates whose names figured at Sl.Nos. 14, 15 and 16 of the merit list. Appointment letters for two of the individuals were issued on 18.11.1991 whereas the appointment letter for the candidate at Sl.No.14 was issued on 21.1.1992. Meanwhile two more candidates at Sl.Nos. 13 and 17 declined to join the posts. Consequently the Government was requested to appoint the candidate at Sl.No.18. By another letter dated 14.10.1992 the candidates at Sl.No.19, 20 and 21 of the merit list were recommended for issuance of appointment orders. The State declined the recommendation. These candidates filed writ

petitions. The writ petitions of two of the candidates were allowed and the writ petition of the other candidate was disposed of directing the High Court to recommend his name under the Rules with a direction to the Government to appoint him forthwith. Eventually pursuant to the order of the Supreme Court, on appeals preferred by the State, a candidate at Sl.No.19 was issued an order of appointment on 17.11.1994. Determination of *inter se* seniority thereby became an issue.

The appropriate sub-committee of the High Court considered the claims for *inter se* seniority and recommended that having regard to the consistent practice followed by the High Court seniority should be determined as per merit and negatived the claim of the appellants and other similarly situated that *inter se* seniority be determined on the basis of respective dates of appointment. The High Court by a resolution accepted the recommendations of the sub-committee, on 17.7.1997. A writ petition was filed by the appellant, which was dismissed. The principal contention reiterated before the Supreme Court by the appellant was that vacancies must be filled up as per the roster points and that *inter se* seniority must be determined on the basis of the respective dates of appointment. The Supreme Court on an analysis of the relevant statutory rules held that the rules lay emphasis on merit and therefore exclude the applicability of a rule of appointment in terms of roster points. The Court also held that in the absence of a specific rule regulating *inter se* seniority the long standing practice prevailing in the High Court has been that seniority should be determined strictly on the basis of the order of merit. At para-33 of the judgment, the Supreme Court framed the issue to be considered as, whether the determination of *inter se* seniority would depend upon filling up of vacancies so far as the reserved categories are concerned having regard to the roster point? The Court relying on the decision of a Constitution Bench

in ***Ajit Singh (II) v State of Punjab([35])*** and disagreeing with a contrary view adopted by a two judges bench decision in ***P.S.Ghulaud v State of Haryana([36])*** and building on the principles enunciated in ***AIIMS Students Unions v AIIMS([37])*** and in ***K.Duraisamy v State of T.N.([38])***, held that seniority is not a fundamental right but a mere civil right. *Inter se* seniority of the candidates appointed on the same day would be dependent on the rules governing the same. Only in the absence of any statutory rules would general principles be applicable. There was no statutory rule determining *inter se* seniority. The Punjab & Haryana High Court in exercise of its power of control u/Art. 235 of the Constitution had been determining *inter se* seniority of the candidates in terms of the instructions of the State dated 27.4.1972. In the absence of any statutory rules, the High Court practice had evolved which cannot be said to be arbitrary. The Supreme Court observed (para-50): "*In any event such practice cannot be interfered with at this stage keeping in view the fact that the right of a large number of officers must already have been determined in terms thereof".* The Court observed that long-standing practice as well as justice and equity favour the respondents. This observation was made in the context of the finding that respondents 8 to 11 though meritorious were unjustly deprived of their right of employment though were entitled under Rule-10 of the Rules. Apart from the analysis on merits, the court declined to interfere on the ground that there were latches on the part of the appellants.

From the aforesaid decision the relevant principle that offers a guidance and authority for a decision in this case is that where a specific statutory rule is present and operational which enjoins the method of determining *inter se* seniority, the rule must be given effect to. It is only in the absence of a statutory rule that

an administrative practice which is otherwise rational, may be followed.

It is useful in this connection to recollect the potent observations in ***B.S.Yadav*** (22 supra)**.** In a different factual context though, the Constitution Bench spelt out a principle of universal application pertaining to the limits of the jurisdiction of the High Court in areas covered by statutory rules made under the proviso to Article.309 of the Constitution (regulating the conditions of service of Judicial Officers attached to the District Courts and to Courts subordinate thereto). ***Yadav*** held that the High Court cannot, in the exercise of its power of control deal with an employee (in the judicial service of the State) otherwise than in accordance with the conditions of his service which are prescribed by the rules made by the Governor exercising power under the proviso to Article.309. The Court pointed out that the power to frame rules regarding seniority of officers in the judicial service of the State is vested in the Governor and not in the High Court. The power exercised by the Governor is thus a power which the legislature is competent to exercise but had not yet exercised. It partakes the characteristic of legislative, not executive power. The power of control conferred upon the High Court by the first part of the Article.235 is expressly made subject by the second part of the Article to laws regulating the conditions of service of its judicial officers. A combined reading of Articles.235 and 309 lead to the position that though the control over the subordinate courts is vested in the High Court, the appropriate Legislature and until that Legislature acts, the Governor of the State, has the power to make rules regulating recruitment and conditions of service of the Judicial Officers of the State. The control vested in the High Court by the first part of Article.235 is therefore subject to any law regulating seniority as envisaged by the second part of that Article. The Rules made by

the Governor (under the proviso to Article.309) are "law" within the meaning of the second part of the Article.235. On analysis of the relevant constitutional provisions, ***Yadav*** concluded that the power of control vested in the High Court by the first part of the Article.235 would not deprive a judicial officer of the rights conferred upon him by a law (rules) made by the legislature (or the Governor) regulating his conditions of service.

In view of the clear ratio and the binding and linear guidance derived from the ***B.S.Yadav*** (22 supra) the position is incontrovertible that the determination of *inter se* seniority of persons recruited to the posts of District & Sessions Judges, Gr-II must follow the mandate of Rule.6 of the Special Rules, a specific rule for determination of such seniority within the matrix of the Special Rules for the State Higher Judicial Service. A recommendation by the 1st respondent, including on the *inter se* preference amongst direct recruits cannot overwhelm the paramount statutory mandate governing determination of seniority, particularly where the determination of *inter se* seniority pertains to a composite class of direct recruit and promotee officers, an aspect which is textually outside the pale of Rule.2A of the Special Rules read with Rule.22, or Rule.33(b) of the General Rules.

As a consequence of the above analysis the conclusion is compelling that the *inter se* seniority (between the respondents 2 to 5) determined consequent on the order of the 6th respondent in G.O.Ms. No. 843, dated 1.3.1996, cannot *per se* confer *en bloc* seniority to respondents 2 to 5 over the petitioner. The executive order of the 6th respondent (notwithstanding that it is consequent on the recommendation of the selection authority – the 1st respondent), cannot interrupt the trajectory of Rule-6 of the Special Rules.

Rule 33(b) of the General Rules enables the appointing authority, at the time of passing an order appointing two or more persons simultaneously to a service, to fix either for the purpose of satisfying the rule of reservation for appointment or for any other reason, the order of preference among them, and when such order is fixed seniority shall be determined in accordance with it. Since respondents 2 to 4 were appointed to category-II of the service by a separate order (G.O.Ms. No. 509 dated 28.9.1993) vis-à-vis the distinct order of appointment of the 5th respondent (G.O.Ms. No. 616 dated 20.11.1993), Rule 33(b) of the General Rules would not authorize the 6th respondent – appointing authority to fix the order of preference (*inter se* seniority) of respondents 2 to 5, as they were not appointed simultaneously to the service. To overcome this hurdle, by the order in G.O.Ms.No. 843, the provisions of Rule-33(b) of the General Rules were relaxed. On such relaxation the 6th respondent notified the *inter se* seniority of the respondents 2 to 5 in the manner specified in G.O.Ms. No. 843 i.e., 5th respondent followed by respondents 2 to 4. This was done professedly to satisfy the rule of reservation for appointment. Whatever be the underlying intent or the professed justification for this order of the 6th respondent, the *inter se* seniority between the petitioner on the one hand and the respondents 2 to 5 on the other, who come from different streams into Category-II, shall have to be determined consistent with the mandate of Rule-6 of the Special Rules i.e., with reference to the date from which each of them were continuously on duty as District & Sessions Judges Grade-II.

There is another aspect that merits analysis. The Andhra Pradesh State Subordinate Service Rules 1962 (issued in G.O.Ms.No.418, General Administration (Rules) Department, dated 07-03-1962 were superceded by the Andhra Pradesh State

and Subordinate Service Rules 1996 which were published in the Gazette on 27-01-1997. At the time of recruitment of the petitioner and respondent Nos.2 to 5, to the Andhra Pradesh State Higher Judicial Service in 1993, the Andhra Pradesh State and Subordinate Service Rules 1962 were applicable. In this judgment we have referred to these Rules as the General Rules. Rule.2 (in Part-II of the General Rules) reads: " *if any provision in the Rules contained in this Part is repugnant to a provision in the Special Rules applicable to any particular service contained in Par-III the latter shall in respect of that service prevail over the provision in the Rules in this part*".

Even on general principles of statutory interpretation, the provision of a special legislative or statutory dispensation prevails over the provision of a general legislative or statutory dispensation, subject to the interpreter's obligation to attempt harmonious construction; language, context and circumstance enabling. Also the Supreme Court in ***V.Bhaskar Rao*** (2 supra) had pronounced that the Special Rules provide a complete scheme for appointment and seniority of the members of the service (the AP State Higher Judicial Service). Rule.33 of the General Rules sets out the governing general principles for determination of seniority. Rule-33(b) of the General Rules as already noticed, enables an appointing authority, at the time of passing an order appointing a plurality of persons simultaneously to a service, to fix including for the purpose of satisfying the Rule of reservation of appointments, the order of preference among them. Rule-6 of the Special Rules is a specific rule governing determination of seniority within the matrix of the Special Rules. On principle and authority a provision of the General Rules inconsistent with a provision of the Special Rules must run subservient to such provision of the Special Rules. On facts too the 6th respondent (appointing authority) did not pass any order

fixing the order of preference between the petitioner and respondent Nos.2 to 5 nor did the 1st respondent (selection authority) recommend any such composite preference amongst the disputants in this writ petition. Rule-33(b) of the General Rules is therefore wholly extraneous to the determination of the *inter se* seniority between the petitioner and respondent Nos.2 to 5. Even if it were applicable its operation would stand dissolved in the solvent of Rule-6 of the Special Rules.

We therefore record and hold on issues (c) and (d) in favour of the petitioner. We declare that the *inter se* seniority between the petitioner and respondent Nos 2 to 5 shall be determined with reference to the respective dates with effect from which these officers were continuously on duty as District & Sessions Judges Grade-II or in posts equivalent thereto.

Issue (e) :

There is a general principle that courts in exercise of their discretion are loath to grant relief where a litigant approaches with inordinate delay or latches. The application of such a principle in service matters relating to seniority is applied with greater vigor. The exercise of discretion against grant of relief on the ground of delay or latches, is for ensuring that settled seniority is not disturbed. There are several public policy considerations subtrating such policy of discretion. Employers and employees act upon a seniority list over a number of years and covering several employees. Unsettling such positions would result in administrative chaos, inconvenience and lead to considerable incoherence in the system of administration. There could be serious financial repercussions as well. In ***Rabindra Nath Bose v Union of India (***[39]***)*** Sikri J (as His Lordship then was) pointed out: "*Each person ought to be entitled to sit back and consider*

that his appointment in promotion effected a long time ago would not be set aside after a lapse of a number of years." There is extant precedential guidance to the exercise of curial discretion in this area. Accordingly, Judicial Review may be declined where there is inordinate delay in questioning the seniority. The relief will however be refused only if the delay is substantial and unexplained, amounts to waiver of claim, acquiescence, or is otherwise overwhelmingly pejorative to public interest.

In ***Joginder Nath and Others v Union of India and Others*** ***([40])*** the Supreme Court pointed out that the rule against latches is one of practice and not of law. The court referred to an earlier Constitution Bench judgment in ***Ramchandra Shankar Deodhar v State of Maharashtra ([41])*** which held that the practice is based on sound and proper exercise of discretion and there was no inviolable rule that whenever there is delay the court must necessarily refuse to entertain the petition. Every case must depend on its own facts. In ***Joginder Nath*** (40 supra) the court considered the fact that except the promotion to the post of Additional District Judges, the seniority in relation to which was under challenge before it, nothing special had happened creating any right in favour of the respondents or which would unsettle long standing settled matters. ***Joginder Nath*** (40 supra) declined to refuse relief on the ground of latches. This was also a case involving members of the Higher Judicial Service, of Delhi.

In ***G.P. Doval and others v Chief Secretary, Government of U.P. and others ([42])*** the respondents pleaded for denial of relief on the ground of long and unexplained delay. The Supreme Court declined to countenance the respondents' claim that the relief should be denied on account of latches. The court held that as respondents 1 to 3 had not finalized the seniority list for a

period 12 years and were operating the same for further promotions and had not considered the representation of the petitioners, relief could not be refused on the ground of latches.

In ***Arun Kumar Chatterjee v S.E.Railway and others (***[43]***)*** a seniority list prepared in 1967 was challenged under Art. 226 in 1975 and meanwhile several departmental representations were made without response. The Supreme Court held that there was no delay, much less an inordinate delay. In Para-12 of this judgment the Apex court held that there was no justification for the attitude adopted by the Railway administration, of depriving the appellant of his legitimate right. The court pointed out that loss of seniority with consequent loss of promotional prospects, higher pay and emoluments is a mater of serious consequence. The court observed that when an employee by his representation drew the attention of the departmental authority to the injustice done to him, it was their duty to have rectified the mistake and revised the seniority of the appellant. This had not been done and persistently, held the court.

In the case on hand, despite the clear and inescapable mandate of Rule-6 of the Special Rules and without any justification whatsoever, vouchsafed or apparent, the 1st respondent had placed the petitioner below respondents 2 to 4 totally by-passing and in blatant disregard of the mandate of Rule-6. In April 1994, on receipt of the Half Yearly list dated 1.1.1994, the petitioner learnt of his positioning below respondent Nos 2 to 4. He submitted a representation on 19.12.1996 pointing out the mandate of Rule-6 and the consequences that must flow therefrom. 5½ years later the 1st respondent by a laconic order dated 17.8.2001 rejected this representation. Not only is this order of rejection brief to the point of irrelevance but is also unresponsive. The rejection is stated to be in response to the

petitioner's representation dated 19.12.1996 as well. The petitioner's grievance in his representation dated 19.12.1996 was not *qua* the 5th respondent. It was against respondent Nos 2 to 4. The order of rejection dated 17.8.2001 proceeds on the erroneous assumption that the petitioner was representing for fixation of seniority only above the 5th respondent.

In so far as the 5th respondent is concerned, the 6th respondent by an order in G.O.Ms.No. 843 dated 1.3.1996 accorded seniority to this respondent over respondent Nos 2 to 4. This order of the 6th respondent was irrelevant to the determination of seniority between the petitioner and the respondent Nos 2 to 5. The determination of such *inter se* seniority is mandated by Rule 6 of the Special Rules. Oblivious to the statutory position and in transgression of the judicial pronouncement in ***THB Chalapathi*** (1 supra) and the binding authority of ***V.Bhaskar Rao*** (2 supra) as well, in the Half Yearly list as on 1.7.1996 the 5th respondent, who was earlier below the petitioner, was shown above him. This was contrary to the *inter se* seniority position between the petitioner and the 5th respondent as reflected in the Half Yearly list issued as late as on 1.1.1996 as well. Such supersession of the petitioner's seniority by the 5th respondent was without notice and opportunity to the petitioner. No notice or opportunity preceded the 6th respondent's order in G.O.Ms. No.843, either. This was an unlawful as well as an indisciplined administrative process. The petitioner submitted his representation on 18.2.1998. From 1993 to July 1996 consistently about five Half Yearly lists would have, by necessity, shown the 5th respondent below the petitioner. In the circumstances and as he was not issued a notice or opportunity sensitizing him to a potential seniority threat from the 5th

respondent, the petitioner could perhaps have been lulled into a state of repose. This court does not expect employees, in particular Judicial Officers to be obsessed with seniority lists and to practice with regularity an intricate study of the Half Yearly lists.

The petitioner is seen to have submitted a representation on 18.2.1998 within a period of 1½ years from the 1.7.1996 Half Yearly list. His representation dated 18.2.1998 states that "in the recent Half Yearly list" he saw the 5th respondent placed above him. From this it could be inferred that he noticed this fact from the 1.1.1998 list, a not unnatural behaviour for an employee (not to study Half Yearly lists as a regimen).

In the totality of facts and circumstances we are not inclined to refuse the relief. No inordinate delay and latches on the part of the petitioner is discernable or established. The facts do not justify an inference that the petitioner had waived or abandoned his legitimate claim to seniority or had acquiesced in the unlawful deprivation of his seniority. A wider class of higher judicial service officers are not affected by the relief sought in this writ petition. The dispute and the context are confined to these 5 officers – the petitioner and the respondent Nos 2 to 5.

Accordingly, we find on this issue in favour of the petitioner and against the respondents.

In the result, the writ petition is partly allowed. The *inter se* seniority between the petitioner and the respondents Nos. 2 to 5 shall be determined with reference to the respective dates from which each of them were continuously on duty in the category of District and Sessions Judge Grade-II or equivalent category. On the basis of the unvarying and established record and our conclusions herein, the respective dates from which the petitioner and the respondents Nos. 2 to 5 were continuously on duty on substantive appointment, in the post of District and Sessions

Judge Grade-II, in chronological order, are :

06.10.1993 … Third respondent
11.10.1993 … Second respondent
16.10.1993 … Petitioner
18.10.1993 … Fourth respondent
02.12.1993 … Fifth respondent

Consequent on the mandate of Rule-6 of the Andhra Pradesh State Higher Judicial Service Rules the *inter se* seniority of these officers shall be in the above order, notwithstanding the order of the 6th respondent in G.O.Ms. No. 843, General Administration (SC-F) Department, dated 01.03.1996. The 1st respondent shall revise the *inter se* seniority of these officers in the category of District & Sessions Judge Grade-I and in Selection Grade and Super Time Scale, if any, in the category of District & Sessions Judge Grade-I, on the basis of the *inter se* seniority in the District & Sessions Judge Grade-II as by this judgment declared, subject to any special circumstances of an individual officer (the petitioner and respondents Nos. 2 to 5) as may have contributed to their particular position in *inter se* seniority in Grade-I, Selection Grade or Super Time Scale, as the case may be. The petitioner shall also be entitled to all consequent benefits on restoration of his seniority, as by this judgment declared, including confirmation in the category of District & Sessions Judge Grade-II and Grade-I.

There shall be no order as to costs.

Dated: 23-03-2007 ----------
LR Copy to be marked: YES Justice G.Raghuram

B/o
Pvsn/Pvks/Tsnr ----------
Justice S.Ananda Reddy

NB: C.C in three days./b/o. grr/*

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[1] 1986 LAB.I.C.1069

[2] AIR 1993 SC 2260
[3] AIR 1985 SC 1046
[4] AIR 1980 SC 1098
[5] (1980) 4 SCC 226
[6] (1977) 3 SCC 399
[7] (1977) 1 SCC 308
[8] AIR 1984 SC 1595
[9] 1991 Supp(2) SCC 51
[10] (1990) 2 SCC 715
[11] 1989 Supp (1) SCC 194
[12] (1986) 2 SCC 157
[13] 2006) 4 SCC 1
[14] (1987) 4 SCC 601
[15] (1975) 3 SCC 503
[16] (1994) Supp.I SCC 276
[17] AIR 1996 SC 2121
[18] (1971) 2 SCC 58
[19] AIR 1981 SC 1243
[20] (1995) 6 SCC 684
[21] (1996) 2 SCC 715
[22] AIR 1981 SC 561
[23] AIR 1975 SC 483
[24] AIR 1977 SC 251
[25] (2005) 8 SCC 454
[26] (1994) Supp.(3) SCC 308
[27] *(2007) 1 SCC 405*
[28] (1994) 6 SCC 301
[29] (2000) 8 SCC 182
[30] (1995) 3 SCC 486
[31] 1993 Supp (3) SCC 181
[32] (1998) 4 SCC 456
[33] (2007) 1 SCC 683
[34] (2003) 5 SCC 605
[35] AIR 1967 SC 52
[36] (1995) 5 SCC 625
[37] (2002) 1 SCC 428
[38] (2001) 2 SCC 38
[39] AIR 1970 SC 470
[40] (1975) 3 SCC 459
[41] (1974) 1 SCC 817
[42] (1984) 4 SCC 329
[43] (1985) 2 SCC 451